IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY, INTERNATIONAL,
Plaintiff/Respondent,

vs.

GERALD ARMSTRONG,
Defendant/Appellant.

NO. A075027

CLERK'S TRANSCRIPT ON APPEAL

FROM A JUDGMENT MADE AND ENTERED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

VOLUME 24

For the Plaintiff/Respondent:

Andrew Wilson, Esq.
WILSON, RYAN & CAMPILONGO
115 Sansome Street, 4th Floor
San Francisco, CA 94104

For the Defendant/Appellant (In Pro Per):

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, CA 94960

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

DEPARTMENT 1

CHURCH OF SCIENTOLOGY, INTERNATIONAL,)
Plaintiff,)
)
vs.)
)
GERALD ARMSTRONG,)
Defendant.)

No. 157680

GARY W. THOMAS	JUDGE
JOHN P. MONTGOMERY	COURT EXECUTIVE OFFICER
ELAINE PASSARIS	REPORTER

For the Plaintiff:

Andrew Wilson, Esq.
WILSON, RYAN & CAMPILONGO
115 Sansome Street, 4th Floor
San Francisco, CA 94104

For the Defendant (In Pro Per):

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, CA 94960

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Case Nos. B025920 & B038975

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff-Appellant,

and

MARY SUE HUBBARD

Intervenor-Plaintiff-Appellant,

v.

GERALD ARMSTRONG,

Defendant-Respondent.

NOTICE OF MOTION AND MOTION TO SEAL RECORD ON APPEAL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KENNETH LONG

Appeal from the Superior Court of the State
of California for the County of Los Angeles
Honorable Bruce R. Geernaert, Judge
Case No. C420153

Eric Lieberman
RABINOWITZ, BOUDIN,
KRINSKY, STANDARD &
LIEBERMAN, P.C.
740 Broadway, Fifth Floor
New York, New York 10003-9518
(212) 254-1111

Helena K. Kobrin
BOWLES & MOXON
6255 Sunset Blvd.
Suite 2000
Los Angeles, CA 90028
(213) 661-4030

Counsel for Plaintiff and Appellant
CHURCH OF SCIENTOLOGY OF CALIFORNIA

MICHAEL LEE HERTZBERG
740 Broadway, Fifth Floor
New York, New York 10003-9518
(212) 982-9870

Counsel for Intervenor and Appellant
MARY SUE HUBBARD

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff-Appellant,

and

MARY SUE HUBBARD,

v.

GERALD ARMSTRONG,

Defendant-Respondent.

Case Nos. B025920 & B038975

LASC No. C420153

NOTICE OF MOTION AND MOTION TO SEAL RECORD ON APPEAL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KENNETH LONG

Plaintiff Church of Scientology of California ("CSC") and Intervenor Mary Sue Hubbard ("Mrs. Hubbard") hereby move the Court for an order sealing portions of the record on appeal.

This motion to seal is made on the ground that the case was filed to vindicate property and privacy interests that had been invaded by defendant, and to leave these portions of appellate record unsealed will result in further violations of those interests. In addition, the trial court found that documents in issue in this case were stolen from plaintiff, and that CSC "had made out a prima facie case of conversion, breach of fiduciary duty, and breach of confidence, and that Mary Sue Hubbard had made out a prima facie case of conversion and invasion of privacy." When the case was settled in December 1986, the parties entered into a stipulation that the court files would be sealed, and the July 29, 1991 decision of this Court upheld the validity of that stipulation against a challenge by an individual who was not a party to the underlying action, and ruled that the files below should remain sealed pursuant to agreement of the parties upon settlement. This action was the only method available to appellants to protect their rights, and the sealing of the files is therefore proper.

This motion is based on this notice of motion and motion, the attached Declaration of Kenneth Long, the attached Memorandum of Points and Authorities, the Brief of Appellants, Reply Brief of Appellants and Response to Cross Appeal, the record on appeal and the briefs on file herein.

DATED: September 11, 1991

Respectfully submitted,

Eric M. Lieberman
RABINOWITZ, BOUDIN,
STANDARD, KRINSKY &
LIEBERMAN, P.C.

BOWLES & MOXON

By: Helena K. Kobrin
Helena K. Kobrin

Counsel for
Plaintiff and Appellant

MICHAEL LEE HERTZBERG
Counsel for Intervenor and
Appellant MARY SUE HUBBARD

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I.

PRELIMINARY STATEMENT

On July 29, 1991, this Court issued its decision in this case reversing an Order of the trial court unsealing the file in Church of Scientology of California v. Armstrong (B038975). The Court ruled that the trial court files were to remain sealed, but also ruled that "plaintiffs have not formally requested sealing of the record on appeal," and left it open for them to do so. (Decision at 18-19.) Appellants hereby accept that invitation and request that the Court order portions of the appellate record sealed as well.

The full record below has been sealed since December 1986 based upon stipulation of the parties at the time of settlement. Prior to that time, the underlying documents which are the subject matter of this suit were sealed during the pendency of the case because of their confidential nature. The trial court has ruled that defendant's actions with respect to the documents constitute conversion, breach of fiduciary duty, and breach of confidence with respect to plaintiff, and conversion and invasion of privacy with respect to Intervenor Mary Sue Hubbard. The appellate record is permeated with references to and discussions of the stolen documents throughout. Under these circumstances, it is appropriate for the Court to order portions of the record on appeal sealed.

II.

THE FACTS OF THIS CASE PROVIDE AMPLE CRITERIA UPON WHICH A SEALING ORDER CAN BE MADE

The documents in this case were kept in the court files under seal from shortly after the inception of this lawsuit. At that time, Judge Cole of the Superior Court issued a temporary restraining order and then a preliminary injunction requiring defendant to deposit the documents which he had converted from plaintiff with the clerk of the court under seal. They remained under seal up to the time of trial, and many of them continued to be sealed after that time.

Appellants' claims in this case were tried before Judge Breckenridge without a jury in May 1984. At trial, appellants presented their case without introducing any of the private documents so as not to undermine the very privacy rights they brought suit to protect. Nonetheless, at the close of trial, at Armstrong's request, and over appellants' objections, the court admitted into evidence and ordered unsealed a small percentage of the thousands of documents held under seal by the clerk on the ground that they were relevant to Armstrong's defense. These documents were unsealed, and quotations from them and information derived from them entered the trial transcript and pleading file of the case.

On June 20, 1984, Judge Breckenridge issued a Memorandum of Intended Decision, (Exhibit A), which became a Statement of Decision by Minute Order dated July 20, 1984. (Ex. B.) The decision included findings of liability on the part of Armstrong for conversion, breach of fiduciary duty, breach of confidence and invasion of privacy. Judge Breckenridge's Decision ordered certain documents the court had admitted into evidence to be unsealed, but a series of appeals effectively kept these papers under seal until December 1986, when they were returned to CSC as part of the settlement agreement described below.

After lengthy negotiations, the parties presented Judge Breckenridge on December 11, 1986, with a settlement of Armstrong's countersuit and the injunctive portion of appellants' claims against Armstrong. The injunctive claims were mooted by the return to plaintiff of all but six of the documents which were kept in the court's files because they were in controversy in pending litigation in another case. The returned documents included all documents that had been entered into evidence. An integral, indispensable part of that settlement was the sealing of the court's record[1] and the stolen documents still held by the court.

The sealing aspect of the settlement was documented in the stipulated Sealing Order executed and entered by Judge Breckenridge on December 11, 1986, (Ex. C):

> The entire remaining record of this case, save only this order, the order of dismissal of the case, and any orders necessary to effectuate this order and the order of dismissal, are agreed to be placed under the seal of the Court.

Ex. C at 2. The cross-complaint was dismissed with prejudice by Judge Breckenridge on that same day, December 11, 1986. (Order Dismissing Action With Prejudice, Ex. D.)

On October 11, 1988, almost two years after the settlement of the case and sealing of the record, non-party Bent Corydon filed his motion to unseal the file. Los Angeles

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[1] Because of the court's evidentiary rulings, quotations and information from the private documents did appear in the transcript of the trial and the pleading file.

Superior Court Judge Geernaert went far beyond what Corydon requested and ordered the files totally unsealed. In its July 29, 1991 decision, this Court ruled that the unsealing by Judge Geernaert had been improper, and ordered the files resealed. The Court ruled, however, that the appellate files were not to be sealed, but that plaintiff could move for a sealing order.

The record on appeal consists of various categories of documents, primarily the trial transcripts, trial exhibits, including those which were sealed documents which Judge Breckenridge allowed into the trial record, and briefs discussing those exhibits in detail. Because of the findings of the trial court with respect to appellants' prima facie case against defendant on several causes of action, the fact that the documents involved were stolen from plaintiff in the first place, the permeation of the record with the documents or discussion of them, and the negotiated agreement of the parties that the record be sealed, it is appropriate for this Court to seal portions of the record on appeal as well.

III.

THE APPLICABLE LEGAL STANDARDS PERMIT SEALING OF THE COURT FILE IN THIS CASE

The United States Supreme Court has long recognized as an "uncontested" proposition that "the right to inspect and copy judicial records is not absolute" and that "every court has supervisory powers over its own records and files. . . ." Nixon v. Warner Communications, Inc. (1978) 435 U.S. 589, 598, 98 S.Ct. 1306; see, Champion v. Superior Court (1988) 201 Cal.App.3d 777, 247 Cal.Rptr. 624, 629, quoting in

Matter of Estate of Hearst (1977) 67 Cal.App.3d 777, 783, 136 Cal.Rptr. 821, 824 ("Clearly a court has inherent power to control its own records to protect the rights of litigants before it. . . ."). The Supreme Court has explained that denial of access to judicial records may be appropriate in a variety of situations, including for the protection of privacy interests. Nixon v. Warner Communications, 435 U.S. at 598.

When the Court rendered its decision in this case, its discussion of the sealing of appellate files relied on Champion v. Superior Court (1978) 201 Cal.App.3d 777, 247 Cal.Rptr. 624, a recent case which expounded criteria for the sealing of a record on appeal or portions thereof. The court in Champion noted that the California Rules of Court provided no guidance for its decision, but that appellate courts could adapt to their use the procedures outlined in cases discussing trial court sealing orders. Based upon those cases, the court ruled that parties seeking a sealing order should segregate the documents which should be sealed from those which should not, and should present a factual declaration which explains the needs of the particular case. Id. at 788, 247 Cal.Rptr. at 630. Any such sealing request was itself required by the Champion court to be filed publicly. The arguments in support of sealing were to be presented in a general, non-confidential manner to the extent possible. Id. at 788-789, 247 Cal.Rptr. at 631.

The Court in Champion quoted the opinion in Matter of Estate of Hearst (1977) 67 Cal.App.3d 777, 782-783, 136 Cal.Rptr. 821, 824, where the general rule was stated that public records should be kept open to the public, but that "countervailing public policy might come into play as a result of events that tend to undermine individual security, personal liberty, or private property, or that injure the public or the public good." A number of factors in this case militate in favor of a conclusion that the record on appeal should be sealed based on such considerations.

First, this case involves property and privacy rights of plaintiff and Intervenor Mary Sue Hubbard, as found by the trial court, which fall within the category of "countervailing public policy." The case arose because defendant violated those rights by stealing the proprietary documents, to which he had no legal right. That this is such a case is one factor warranting the sealing of the files. The nature of the documents stolen -- consisting of personal, private, confidential and nonpublic documents -- is a second factor which lends itself to a conclusion that the files should be sealed.

The public policy implications of an unsealing are underscored by the constitutional protection which the right of privacy is afforded in California; see California Constitution, Article 1, § 1, against both governmental and nongovernmental invasions. Porten v. University of San Francisco (1976) 64 Cal.App.3d 825, 829, 134 Cal.Rptr. 839, 841-42. California, in fact, provides broader constitutional protection for privacy rights than does the federal constitution. See, City of Santa Barbara v. Adamson (1980) 27 Cal.3d 123, 130 n.3, 164 Cal.Rptr. 539, 543 n.3. Personal documents and information derived from them clearly are protected by the right of privacy in California. E.g., City of Carmel-by-the-Sea v. Young (1970) 2 Cal.3d 259, 268, 85 Cal.Rptr. 18; Division of Medical Quality v. Gherardini (1979) 93 Cal.App.3d 669, 678, 156 Cal.Rptr. 55, 60-61.

When a constitutional right to privacy is implicated, the courts do not merely balance that right against the right of access to records. Rather, in such cases the judicial records are presumptively placed under seal. See, Richards v. Superior Court (1978) 86 Cal.App.3d 265, 150 Cal.Rptr.77 (party producing private financial information through discovery is presumptively entitled to a protective order limiting disclosure only to counsel for the other party and only for use in that litigation). Only specific, compelling state interests can overcome that presumption -- and those interests must be expressly articulated by the trial court. See, id. at 272, 150 Cal.Rptr. at 81 ("substantial reason ... related to the lawsuit" is required for disclosure); Britt v. Superior Court (1978) 20 Cal.3d 844, 856 n.3, 143 Cal.Rptr.695, 702 n.3, 574 P.2d 766; Gunn v. Employment Development Dep't. (1979) 94 Cal.App.3d 658, 156 Cal.Rtpr. 584.

Privacy rights, along with trade secrets and other limited types of rights, have long been held to warrant sealing of records. See, e.g., Nixon v. Warner Communications, Inc., 435 U.S. at 598; Brown & Williamson Tobacco Corp. v. F.T.C. (6th Cir. 1983) 710 F.2d 1165, 117 cert. denied, 465 U.S. 1100 (1984).

In the analogous area of trade secrets, it is routine for courts to seal judicial records, in order to:

> [P]rotect the very rights which parties have filed suit to vindicate. The most thorough review of the decisional law in this area states that the object of such safeguarding procedures is, of course, to prevent, so far as possible, the litigation designed to enforce rights in the trade secret from being itself destructive of secrecy and the value of the subject matter of the litigation.

Annot. 62 A.L.R.2d 509, 513. Thus, cases are legion in which courts have ordered that testimony and exhibits regarding business secrets be submitted in camera, sealed and impounded. E.g., A.O. Smith Corp. v. Petroleum Iron Works Co. (6th Cir. 1934) 73 F.2d 531, 539 note, modified on other grounds (6th Cir. 1935) 74 F.2d 934 (trial and appellate records sealed); Vitro Corp. v. Hall Chemical Co. (6th Cir. 1958) 254 F.2d 787, 788 (affirming trial court order impounding transcripts, exhibits and briefs).

Judge Breckenridge was aware in entering the sealing order that the privacy interest of appellants was exceptionally strong. He specifically found that appellants proved a prima facie case of conversion and invasion of privacy. They sought and obtained the sealing order to protect private information quoted or derived from their documents which had been admitted into evidence over their objection. Privacy rights in personal documents and information are entitled to constitutional protection in California. See, e.g., City of Carmel-by-the-Sea v. Young (1970) 2 Cal.3d 259, 268, 85 Cal.Rptr. 18; California Constitution, Article 1, § 1; Porten v. University of San Francisco (1976) 64 Cal.App.3d 825, 829, 134 Cal.Rptr. 839, 841. Appellants' privacy interest in this material will be irreparably harmed if the entirety of the court file is opened to the public.

Numerous courts and commentators have inveighed against such a perverse judicial exacerbation of the very intrusion that a plaintiff seeks to remedy. In United States v. Hubbard (D.C.Cir. 1981) 650 F.2d 293, the Court of Appeals reversed a trial court's order unsealing private Church of Scientology documents. The single most important element in the Court of Appeals decision was the fact that the documents had been introduced as exhibits in a hearing brought on -- as in the instant case -- for the very purpose of protecting defendants' constitutional and common law right of privacy. The court noted that it would be ironic indeed if "one who contests the lawfulness of a search and seizure were always required to acquiesce in a substantial invasion of those privacy interests simply to vindicate them." Id. at 321. The court's order to continue the seal was thus intended to neutralize the "untoward" fact that the mere "initiation of a privacy action itself involves the additional loss of privacy" and "normally multiplies the very effect from which relief is sought." Id. at 307 n.52 (quoting Gavison, Privacy and the Limits of the Law, 89 Yale L.J. 421, 457 (1980), and Emerson, The Right of Privacy and Freedom of the Press, 14 Harv. C.R. - C.L.L. Rev. 329, 348 (1979), respectively). In the instant case, this "most important element" is even more compelling. Appellants here made every effort to vindicate their privacy interests without doing them further damage. Whereas in Hubbard, the documents were introduced into evidence by the proponents of confidentiality, in this case the proponents opposed the introduction of the documents. Perhaps even more important, while the documents in Hubbard were lawfully seized pursuant to a judicially authorized search warrant, the documents in this case were unilaterally "seized" by a private individual without probable cause and without prior judicial review. The intrusion on privacy is therefore more severe -- and any countervailing justification for publicizing the documents and court records reflecting information from them is correspondingly weaker.

The record on appeal in this case consists of the trial transcripts, the documents constituting the appendix, and the various briefs filed in connection with the appeal. Many of these documents contain some discussion of the converted documents which were sealed by the trial court, as discussed in greater detail in the declaration of Kenneth Long, the individual who worked as CSC's representative in connection with this case, and who is familiar with the appellate record. Because of the compelling reasons discussed herein, and particularly the fact that many of the documents in the appellate record, other than the briefs, are the same documents that have been sealed below for nearly five years, portions of the appellate record should also be sealed.

Another compelling factor warranting sealing of the record on appeal is the fact that there was a negotiated settlement between the parties which provided for sealing and was approved by the trial court, and weighs heavily in favor of sealing of the identical documents which exist in the appellate record. It is the policy of California's courts to encourage settlements and to enforce judicially supervised settlements. Phelps v. Kozakar (1983) 146 Cal.App.3d 1078, 1082, 194 Cal.Rptr. 872, 874; Fisher v. Superior Court (1980) 103 Cal.App.3d 434, 437, 440-441, 163 Cal.Rptr. 47, 49, 52. The acceptance of orders sealing judicial records as necessary and proper provisions of settlement agreements is supported by reported cases containing references to such orders without criticism or comment. See, e.g., Champion v. Superior Court (1988) 201 Cal.App.3d 777, 247 Cal.Rptr. 624, 628 (requiring an assertion of need for continued sealing when documents are submitted to be sealed in the appellate court); Owen v. United States (9th Cir. 1983) 713 F.2d 1461, 1462.

In In re Franklin National Bank Securities Litigation (E.D.N.Y. 1981) 92 F.R.D. 468, aff'd sub nom. Federal Deposit Insurance Corp. v. Ernst & Ernst (2nd Cir. 1982) 677 F.2d 230 the confidentiality order -- insisted on by one party -- was a critical factor in the settlement of the case. Two years after the case was settled and the order was entered, a non-party moved to intervene to request that the order be modified. The district court held that the "strong public policy favoring settlements of disputes" and "the importance of the stability of judgments and settlements, argue strongly against modification of the order," and that the "[l]apse of time also works against intervenors' position." 92 F.R.D. at 472. The court stated:

> The settlement agreement resulted in the payment of substantial amounts of money and

> induced substantial changes of position by many parties in reliance on the condition of secrecy. For the court to induce such acts and then to decline to support the parties in their reliance would work an injustice on these litigants and make future settlements predicated upon confidentiality less likely.

Id. at 472. The principles which underlie the ruling in the Franklin litigation apply as well to the sealing of portions of the appellate court file. Other parties to the lawsuit reached a partial settlement of the case -- which included a monetary settlement of Armstrong's cross-complaint for monetary damages -- in reliance on the order sealing the file. For the same documents which were sealed as a result and other documents discussing the sealed papers, created in relation to the appeal, to be unsealed in the appellate court, works a serious injustice on the plaintiffs.

Indeed, a similar situation to this case was presented most recently to the Eleventh Circuit Court of Appeals in Wakefield v. Church of Scientology of California (11th Cir. 1991) ___ F.2d ___, Slip.Op. 4625 (Exhibit E). In that case, plaintiff Wakefield settled a case with defendant Church, and then repeatedly violated her settlement agreement by violating its confidentiality provisions. The Church brought contempt proceedings against Wakefield, and sought to have the proceedings *in camera*, in order to protect the very privacy rights placed at issue by Wakefield's conduct. According to the Eleventh Circuit, the district court ordered that contempt proceedings commence before a magistrate, and closed the proceedings to the public and the press stating:

> [D]ue to plaintiff's complete and utter

> disregard of prior orders of this court, the court concludes that any restriction, short of complete closure would be ineffective. . . . Publicity of a private crusade has become her end, not the fair adjudication of the parties' dispute. In doing so, plaintiff is stealing the court's resources from other meritorious cases.

Ex. E, Slip.Op. at 4627.

Various newspapers protested and appealed the closure order. At the conclusion of the closed proceedings, the magistrate found that Wakefield had wilfully violated the court's injunction, and recommended criminal contempt proceedings. The district court granted the newspapers access to some of the transcripts of the hearings, but refused to permit them access to those which discussed the terms of Wakefield's settlement agreement -- that is, those portions of the proceedings which were permeated with discussions of matters which Wakefield and the Church had agreed to keep confidential, and which the Church had brought contempt proceedings to protect. On appeal by the newspapers, the Eleventh Circuit upheld the privacy interests which the Church sought to protect, and refused to grant public access to any more of the record. Id. at 4629 - 4630.

Wakefield demonstrates that the deliberate interjection into judicial proceedings of matters which are unequivocally private to one of the parties, by a recalcitrant litigant who refuses to bend to the orders of the court, should not and must not be permitted to subvert the constitutional protections of the privacy interests of innocent litigants. So, here, this Court should not permit the litigation surrounding the Church's demonstrated privacy interests to subvert their ultimate protection.

In this case, the trial judge, Judge Breckenridge, in his sound discretion, ordered the sealing of the trial record to facilitate a settlement of this case and to permit appellants to achieve the bargained-for benefit in privacy and property for which they brought the underlying lawsuit. The bargain of the parties which this Court found was to be upheld, not having been challenged for two years after its negotiation and effectuation, is rendered somewhat meaningless if the appellate files are not sealed. If the filing of an appeal to vindicate the right to have files remain sealed results in a ruling that the files are to be sealed in one court but not in another, then the right is nugatory. The challenge of a private litigant two years after the sealing agreement did not make appropriate the unsealing of the files below. It should not do so in this Court either.

Finally, the fact that appellants here were obliged to use the courts to protect their privacy interests is further reason to impose a seal on the appellate record here. In Matter of Estate of Hearst (1977) 67 Cal.App.3d 777, 136 Cal.Rptr 821, the court emphasized that the family had alternatives to reliance on the courts and could have "eschew[ed] court-regulated devices for transmission of inherited wealth and rel[ied] on private arrangements such as inter vivos gifts, joint tenancies, and so-called 'living' or grantor trusts." Id. at 783-84, 136 Cal.Rptr. at 824. The appellants here had no such alternatives for private action. They had no mechanism for recovery of the converted documents other than bringing this lawsuit. Self-help, in the form of "seizing the documents from Armstrong," was certainly not appropriate, and no court would wish to encourage such action by penalizing a party for seeking to preserve its privacy rights through the courts.

Consideration of the factors above warrants that sealing of the appellate file should be granted. Accordingly, this Court should seal those portions of the appellate record designated in paragraph 8 of the attached Declaration of Kenneth Long.

IV.

CONCLUSION

This case arises out of the wrongdoing of defendant in converting private documents, invading the privacy of Intervenor Mary Sue Hubbard, breaching confidences, and breaching his fiduciary duty to plaintiff. Thus, from its inception, the case deals with violations of plaintiff's and Intervenor's rights. This suit was the only method of vindicating those rights, and it resulted in some of the confidences sought to be protected being revealed in documents which would ordinarily be public. The parties settled the suit and stipulated to the sealing of the files, and the trial court approved that settlement. The fact that this appeal has been filed should not negate the privacy and property interests involved, which weigh heavily in favor of a conclusion that all portions of the record containing stolen documents or

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portions or discussions of them should be sealed both in the trial court and on appeal.

Dated: September 11, 1991

Respectfully submitted,

Eric Lieberman
RABINOWITZ, BOUDIN, KRINSKY,
STANDARD & LIEBERMAN, P.C.

BOWLES & MOXON

By: Helena K. Kobrin
Helena K. Kobrin

Counsel for Plaintiff and
Appellant

MICHAEL LEE HERTZBERG
Counsel for Intervenor and
Appellant MARY SUE HUBBARD

DECLARATION OF KENNETH LONG

I, KENNETH LONG, hereby declare:

1. I am over the age of eighteen. I have been employed by Church of Scientology of California ("CSC") for 9 years as a paralegal, acting as CSC's representative to assist various of its attorneys during that time period. I have personal knowledge of the matters set forth below and would and could competently testify thereto if called upon to do so.

2. During the course of my employment as a paralegal, I have worked extensively on the case of Church of Scientology of California v. Armstrong, Los Angeles Superior Court Case No. C 420153, and Appellate Case No. B025920 ("Armstrong"). I am well familiar with the documents on file in Armstrong, both in the Superior Court and on appeal.

3. The trial transcripts which are part of the Armstrong record consist of 4,346 pages of testimony. The single lengthiest testimony is that of defendant, Gerald Armstrong. His testimony covers approximately 852 pages. Throughout Armtrong's testimony, there was discussion of the documents converted by Armstrong that had been ordered returned to the court and sealed by Judge Cole near the inception of the suit.

4. Discussion of the contents of these documents also occurred during the testimony of other witnesses. Vaughn Young testified for about 136 transcript pages and Laurel Sullivan for roughly 425 pages. Their testimony also included discussion of the stolen documents which had been sealed by the trial court. Thus, between Armstrong, Sullivan and Young,

nearly a third of the trial transcripts contain discussions of the very materials for which suit was originally brought to effect return and maintain privacy.

5. The Armstrong appellate briefs also contain many references to, and descriptions and discussions of the stolen documents which were sealed during this litigation and which were returned to plaintiff upon settlement of the lawsuit in December 1986. A material term of that settlement was the return of those documents and the sealing of the record in this case in order to protect the privacy and property interests of CSC and Intervenor Mary Sue Hubbard, who had initiated this action to vindicate those rights.

6. The appendices filed in the appellate court contain numerous documents that discuss the stolen documents and their contents, or matters arising from those documents. Out of 22 documents in the B038975 appendix, ten contain such references: Exhibits C, H, I, K, L, N, O, Q, U, and V. The appendix for B025920 also contains documents with such references, including pages 57-60 and 251-277.

7. All of the documents in the Armstrong appellate record, with the exception of the appellate briefs, have been sealed below since December 11, 1986 as a result of the stipulation of the parties upon settlement of the case.

8. Accordingly, on behalf of CSC, I respectfully request the Court to seal the testimony of Gerald Armstrong, Vaughn Young and Laurel Sullivan in the Armstrong Reporter's Transcript, pages 57-60 and 251-277 in Armstrong Appellant's Appendix, pages 4-28 of Respondent's Brief in Armstrong, and

Exhibits C, K, L and N in the "Appendix of Appellants" filed in Appeal No. B038975. If these portions of the appellate record are also sealed, it will preserve the property and privacy interests which CSC has fought to protect by its filing of the Armstrong suit, and which the trial court recognized in sealing the documents at the outset of the litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California this 10th day of September, 1991.

Kenneth Long
Kenneth Long

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA,
Plaintiff,
vs.
GERALD ARMSTRONG,
Defendant.

MARY SUE HUBBARD,
Intervenor.

No. C 420153

MEMORANDUM OF INTENDED DECISION

In this matter heretofore taken under submission, the Court announces its intended decision as follows:

As to the tort causes of action, plaintiff, and plaintiff in intervention are to take nothing, and defendant is entitled to Judgment and costs.

As to the equitable actions, the court finds that neither plaintiff has clean hands, and that at least as of this time, are not entitled to the immediate return of any document or objects presently retained by the court clerk. All exhibits received in evidence or marked for identification, unless specifically ordered sealed[1], are matters of public record and shall be available for public inspection or use to the same extent that any such exhibit would be available in any other lawsuit. In other words they are to be treated henceforth no differently than similar exhibits in other cases in Superior Court. Furthermore, the "inventory list and description," of materials turned over by Armstrong's attorneys to the court, shall not be considered or deemed to be confidential, private, or under seal.

All other documents or objects presently in the possession of the clerk (not marked herein as court exhibits) shall be retained by the clerk, subject to the same orders as are presently in effect as to sealing and inspection, until such time as trial court proceedings are concluded as to the severed cross complaint. For the purposes of this Judgment, conclusion will occur when any motion for a new trial has been denied, or the time within such a motion must be brought has expired without such a motion being made. At that time, all documents neither received in evidence, nor marked for identification only, shall be released by the clerk to plaintiff's representatives. Notwithstanding this order, the parties may at any time by written stipulation filed with the clerk obtain release of any or all such unused materials.

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[1] Exhibits in evidence No. 500-40; JJJ; KKK; LLL: MMM; NNN; OOO; PPP; QQQ; RRR; and 500-QQQQ.

Exhibits for identification only No. JJJJ; Series 500-DDDD, EEEE, FFFF, GGGG, HHHH, IIII, NNNN-1, OOOO, ZZZZ, CCCCC, GGGGG, IIIII, KKKKK, LLLLL, OOOOO, PPPPP, QQQQQ, BBBBBB, OOOOOO, BBBBBBB.

Defendant and his counsel are free to speak or communicate upon any of Defendant Armstrong's recollections of his life as a Scientologist or the contents of any exhibit received in evidence or marked for identification and not specifically ordered sealed. As to all documents, and other materials held under seal by the clerk, counsel and the defendant shall remain subject to the same injunctions as presently exist, at least until the conclusion of the proceedings on the cross complaint. However, in any other legal proceedings in which defense counsel, or any of them, is of record, such counsel shall have the right to discuss exhibits under seal, or their contents, if such is reasonably necessary and incidental to the proper representation of his or her client.

Further, if any court of competent jurisdiction orders defendant or his attorney to testify concerning the fact of any such exhibit, document, object, or its contents, such testimony shall be given, and no violation of this order will occur. Likewise, defendant and his counsel may discuss the contents of any documents under seal or of any matters as to which this court has found to be privileged as between the parties hereto, with any duly constituted Governmental Law Enforcement Agency or submit any exhibits or declarations thereto concerning such document or materials, without violating any order of this court.

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This court will retain jurisdiction to enforce, modify, alter, or terminate any injunction included within the Judgment.

Counsel for defendant is ordered to prepare, serve, and file a Judgment on the Complaint and Complaint in Intervention, and Statement of Decision if timely and properly requested, consistent with the court's intended decision.

Discussion

The court has found the facts essentially as set forth in defendant's trial brief, which as modified, is attached as an appendix to this memorandum. In addition the court finds that while working for L.R. Hubbard (hereinafter referred to as LRH), the defendant also had an informal employer-employee relationship with plaintiff Church, but had permission and authority from plaintiffs and LRH to provide Omar Garrison with every document or object that was made available to Mr. Garrison, and further, had permission from Omar Garrison to take and deliver to his attorneys the documents and materials which were subsequently delivered to them and thenceforth into the custody of the County Clerk.

Plaintiff Church has made out a prima facie case of conversion (as bailee of the materials), breach of fiduciary duty, and breach of confidence (as the former employer who provided confidential materials to its then employee for certain specific purposes, which the employee later used for other purposes to plaintiff's detriment). Plaintiff Mary Jane Hubbard has likewise made out a prima facie case of conversion and invasion of privacy (misuse by a person of private matters entrusted to him for certain specific purposes only).

While defendant has asserted various theories of defense, the basic thrust of his testimony is that he did what he did, because he believed that his life, physical and mental well being, as well as that of his wife were threatened because the organization was aware of what he knew about the life of LRH, the secret machinations and financial activities of the Church, and his dedication to the truth. He believed that the only way he could defend himself, physically as well as from harassing lawsuits, was to take from Omar Garrison those materials which would support and corroborate everything that he had been saying within the Church about LRH and the Church, or refute the allegations made against him in the April 22 Suppressive Person Declare. He believed that the only way he could be sure that the documents would remain secure for his future use was to send them to his attorneys, and that to protect himself, he had to go public so as to minimize the risk that LRH, the Church, or any of their agents would do him physical harm.

This conduct if reasonably believed in by defendant and engaged in by him in good faith, finds support as a defense to the plaintiff's charges in the Restatements of Agency, Torts, and case law.

Restatement of Agency, Second, provides:

> "Section 395f: An agent is privileged to reveal information confidentially acquired by him in the course of his agency in the protection of a superior interest of himself or a third person.

"Section 418: An agent is privileged to protect interests of his own which are superior to those of the principal, even though he does so at the expense of the principal's interest or in disobedience to his orders."

Restatement of torts, Second, section 271:

"One is privileged to commit an act which would otherwise be a trespass to or a conversion of a chattel in the possession of another, for the purpose of defending himself or a third person against the other, under the same conditions which would afford a privilege to inflict harmful or offensive contact upon the other for the same purpose."

The Restatement of Torts, Second, section 652a, as well as case law, make it clear that not all invasions of privacy are unlawful or tortious. It is only when the invasion is unreasonable that it becomes actionable. Hence, the trier of fact must engage in a balancing test, weighing the nature and extent of the invasion, as against the purported justification therefore to determine whether in a given case, the particular invasion or intrusion was unreasonable.

In addition the defendant has asserted as a defense the principal involved in the case of Willig v. Gold, 75 Cal.App.2d, 809, 814, which holds that an agent has a right or privilege to disclose his principal's dishonest acts to the party prejudicially affected by them.

Plaintiff Church has asserted and obviously has certain rights arising out of the First Amendment. Thus, the court cannot, and has not, inquired into or attempted to evaluate the merits, accuracy, or truthfulness of Scientology or any of its precepts as a religion. First Amendment rights, however, cannot be utilized by the Church or its members, as a sword to preclude the defendant, whom the Church is suing, from defending himself. Therefore, the actual practices of the Church or its members, as it relates to the reasonableness of the defendant's conduct and his state of mind are relevant, admissible, and have been considered by the court.

As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Howard Schomer to be credible, extremely persuasive, and the defense of privilege or justification established and corroborated by this evidence. Obviously, there are some discrepancies or variations in recollections, but these are the normal problems which arise from lapse of time, or from different people viewing matters or events from different perspectives. In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved with LRH, or Mary Jane Hubbard, or of the Scientology Organization, is on the one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH, and his ideas. Each has manifested a waste and loss or frustration which is incapable of description. Each has broken with the movement for a variety of reasons, but at the same time, each is, still bound by the knowledge that the Church has in its possession his or her most inner thoughts and confessions, all recorded in "pre-clear (P.C.) folders" or other security files of the organization, and that the Church or its minions is fully capable of intimidation or other physical or psychological abuse if it suits their ends. The record is replete with evidence of such abuse.

In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded, "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to extract the maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to detect lies, its own particular phraseology . . .), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect."[2] From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn. In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile. At the same time it appears that he is charismatic and highly capable of motivating, organizing, controlling, manipulating, and inspiring his adherents. He has been referred to during the trial as a "genius," a "revered person," a man who was "viewed by his followers in awe." Obviously, he is and has been a very complex person, and that complexity is further reflected in his alter ego, the Church of Scientology. Notwithstanding protestations to the contrary, this court is satisfied that LRH runs the Church in all ways through the Sea Organization, his role of Commodore, and the Commodore's Messengers.[3] He has, of course, chosen to go into "seclusion," but he maintains contact and control through the top messengers. Seclusion has its light and dark side too. It adds to his mystique, and yet shields him from accountability and subpoena or service of summons.

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[2] Exhibit 500-HHHHH.

LRH's wife, Mary Sue Hubbard is also a plaintiff herein. On the one hand she certainly appeared to be a pathetic individual. She was forced from her post as Controller, convicted and imprisoned as a felon, and deserted by her husband. On the other hand her credibility leaves much to be desired. She struck the familiar pose of not seeing, hearing, or knowing any evil. Yet she was the head of the Guardian Office for years and among other things, authored the infamous order "GO 121669"[4] which directed culling of supposedly confidential P.C. files/folders for purposes of internal security. In her testimony she expressed the feeling that defendant by delivering the documents, writings, letters to his attorneys, subjected her to mental rape. The evidence is clear and the court finds that defendant and Omar Garrison had permission to utilize these documents for the purpose of Garrison's proposed biography. The only other persons who were shown any of the documents were defendant's attorneys, the Douglasses, the Dincalcis, and apparently some documents specifically affecting LRH's son "Nibs," were shown to "Nibs." The Douglasses and Dincalcises were disaffected Scientologists who had a concern for their own safety and mental security, and were much in the same situation as defendant. They had not been declared as suppressive, but Scientology had their P.C. folders, as well as other confessions, and they were extremely apprehensive. They did not see very many of the documents, and it is not entirely clear which they saw. At any rate Mary Sue Hubbard did not appear to be so much distressed by this fact, as by the fact that Armstrong had given the documents to Michael Flynn, whom the Church considered its foremost lawyer-enemy.[5] However, just as the plaintiffs have First Amendment rights, the defendant has a Constitutional right to an attorney of his own choosing. In legal contemplation the fact that defendant selected Mr. Flynn rather than some other lawyer cannot by itself be tortious. In determining whether the defendant unreasonably invaded Mrs. Hubbard's privacy, the court is satisfied the invasion was slight, and the reasons and justification for defendant's conduct manifest. Defendant was told by Scientology to get an attorney. He was declared an enemy by the Church. He believed, reasonably, that he was subject to "fair game." The only way he could defend himself, his integrity, and his wife was to take that which was available to him and place it in a safe harbor, to wit, his lawyer's custody. He may have engaged in overkill, in the sense that he took voluminous materials, some of which appear only marginally relevant to his defense. But he was not a lawyer and cannot be held to that precise standard of judgment. Further, at the time that he was accumulating the material, he was terrified and undergoing severe emotional turmoil. The court is satisfied that he did not unreasonably intrude upon Mrs. Hubbard's privacy under the circumstances by in effect simply making his knowledge that of his attorneys. It is, of course, rather ironic that the person who authorized G.O. order 121669 should complain about an invasion of privacy. The practice of culling supposedly confidental "P.C. folders or files" to obtain information for purposes of intimidation and/or harassment is repugnant and outrageous. The Guardian's Office, which plaintiff headed, was no respector of anyone's civil rights, particularly that of privacy. Plaintiff Mary Sue Hubbard's cause of action for conversion must fail for the same reason as plaintiff Church. The documents were all together in Omar Garrison's possession. There was no rational way the defendant could make any distinction.

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[3] See Exhibit K: Flag Order 3729 - 15 September 1978 "Commodore's Messengers."

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[4] Exhibit AAA.

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[5] "No, I think my emotional distress and upset is the fact that someone took papers and materials without my authorization and then gave them to your Mr. Flynn." Reporter's Transcript, p. 1006.

Insofar as the return of documents is concerned, matters which are still under seal may have evidentiary value in the trial of the cross complaint or in other third party litigation. By the time that proceedings on the cross complaint are concluded, the court's present feeling is that those documents or objects not used by that time should be returned to plaintiff. However, the court will reserve jurisdiction to reconsider that should circumstances warrant.

Dated: June 20, 1984

PAUL G. BRECKENRIDGE, JR.
Judge of the Superior Court

Appendix

Defendant Armstrong was involved with Scientology from 1969 through 1981, a period spanning 12 years. During that time he was a dedicated and devoted member who revered the founder, L. Ron Hubbard. There was little that Defendant Armstrong would not do for Hubbard or the Organization. He gave up formal education, one-third of his life, money and anything he could give in order to further the goals of Scientology, goals he believed were based upon the truth, honesty, integrity of Hubbard and the Organization.

From 1971 through 1981, Defendant Armstrong was a member of the Sea Organization, a group of highly trained scientologists who were considered the upper echelon of the Scientology organization. During those years he was placed in various locations, but it was never made clear to him exactly which Scientology corporation he was working for. Defendant Armstrong understood that, ultimately, he was working for L. Ron Hubbard, who controlled all Scientology finances, personnel, and operations while Defendant was in the Sea Organization.

Beginning in 1979 Defendant Armstrong resided at Gilman Hot Springs, California, in Hubbard's "Household Unit." The Household Unit took care of the personal wishes and needs of Hubbard at many levels. Defendant Armstrong acted as the L. Ron Hubbard Renovations In-Charge and was responsible for renovations, decoration, and maintenance of Hubbard's home and office at Gilman Hot Springs.

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In January of 1980 there was an announcement of a possible raid to be made by the FBI or other law enforcement agencies of the property. Everyone on the property was required by Hubbard's representatives, the Commodore's Messengers, to go through all documents located on the property and "vet" or destroy anything which showed that Hubbard controlled Scientology organizations, retained financial control, or was issuing orders to people at Gilman Hot Springs.

A commercial paper shredder was rented and operated day and night for two weeks to destroy hundreds of thousands of pages of documents.

During the period of shredding, Brenda Black, the individual responsible for storage of Hubbard's personal belongings at Gilman Hot Springs, came to Defendant Armstrong with a box of documents and asked whether they were to be shredded. Defendant Armstrong reviewed the documents and found that they consisted of a wide variety of documents including Hubbard's personal papers, diaries, and other writings from a time before he started Dianetics in 1950, together with documents belonging to third persons which had apparently been stolen by Hubbard or his agents. Defendant Armstrong took the documents from Ms. Black and placed them in a safe location on the property. He then searched for and located another twenty or more boxes containing similar materials, which were poorly maintained.

On January 8, 1980, Defendant Armstrong wrote a petition to Hubbard requesting his permission to perform the research for a biography to be done about his life. The petition states that Defendant Armstrong had located the subject materials and lists of a number of activities he wished to perform in connection with the biography research.

Hubbard approved the petition, and Defendant Armstrong became the L. Ron Hubbard Personal Relations Officer Researcher (PPRO Res). Defendant claims that this petition and its approval forms the basis for a contract between Defendant and Hubbard. Defendant Armstrong's supervisor was then Laurel Sullivan, L. Ron Hubbard's Personal Public Relations Officer.

During the first part of 1980, Defendant Armstrong moved all of the L. Ron Hubbard Archives materials he had located at Gilman Hot Springs to an office in the Church of Scientology Cedars Complex in Los Angeles. These materials comprised approximately six file cabinets. Defendant Armstrong had located himself in the Cedars Complex, because he was also involved in "Mission Corporate Category Sort-Out," a mission to work out legal strategy. Defendant Armstrong was involved with this mission until June of 1980.

It was also during this early part of 1980 that Hubbard left the location in Gilman Hot Springs, California, and went into hiding. Although Defendant Armstrong was advised by Laurel Sullivan that no one could communicate with Hubbard, Defendant Armstrong knew that the ability for communication existed, because he had forwarded materials to Hubbard at his request in mid-1980.

Because of this purported inability to communicate with Hubbard, Defendant Armstrong's request to purchase biographical materials of Hubbard from people who offered them for sale went to the Commodore's Messenger Organization, the personal representatives of Hubbard.

In June of 1980 Defendant Armstrong became involved in the selection of a writer for the Hubbard biography. Defendant Armstrong learned that Hubbard had approved of a biography proposal prepared by Omar Garrison, a writer who was not a member of Scientology. Defendant Armstrong had meetings with Mr. Garrison regarding the writing of the biography and what documentation and assistance would be made available to him. As understood by Mr. Garrison, Defendant Armstrong represented Hubbard in these discussions.

Mr. Garrison was advised that the research material he would have at his disposal were Hubbard's personal archives. Mr. Garrison would only undertake a writing of the biography if the materials provided to him were from Hubbard's personal archives, and only if his manuscript was subject to the approval of Hubbard himself.

In October of 1980 Mr. Garrison came to Los Angeles and was toured through the Hubbard archives materials that Defendant Armstrong had assembled up to that time. This was an important "selling point" in obtaining Mr. Garrison's agreement to write the biography. On October 30, 1980, an agreement was entered into between Ralston-Pilot, ncv. F/S/O Omar V. Garrison, and AOSH DK Publications of Copenhagen, Denmark, for the writing of a biography of Hubbard.

Paragraph 10B of the agreement states that:

> "Publisher shall use its best efforts to provide Author with an office, an officer assistant and/or

research assistant, office supplies and any needed archival and interview materials in connection with the writing of the Work."

The "research assistant" provided to Mr. Garrison was Defendant Armstrong.

During 1980 Defendant Armstrong exchanged correspondence with Intervenor regarding the biography project. Following his approval by Hubbard as biography researcher, Defendant Armstrong wrote to Intervenor on February 5, 1980, advising her of the scope of the project. In the letter Defendant stated that he had found documents which included Hubbard's diary from his Orient trip, poems, essays from his youth, and several personal letters, as well as other things.

By letter of February 11, 1980, Intervenor responded to Defendant, acknowledging that he would be carrying out the duties of Biography Researcher.

On October 14, 1980, Defendant Armstrong again wrote to Intervenor, updating her on "Archives materials" and proposing certain guidelines for the handling of those materials.

It was Intervenor who, in early 1981, ordered certain biographical materials from "Controller Archives" to be delivered to Defendant Armstrong. These materials consisted of several letters written by Hubbard in the 1920's and 1930's, Hubbard's Boy Scout books and materials, several old Hubbard family photographs, a diary kept by Hubbard in his youth, and several other items.

Defendant Armstrong received these materials upon the order of Intervenor, following his letter of October 15, 1980, to her in which Defendant stated, at page 7, that there were materials in the "Controller Archives" that would be helpful to him in the biography research.

After these materials were delivered to Defendant Armstrong, Intervenor was removed from her Scientology position of Controller in 1981, presumably because of her conviction for the felony of obstruction of justice in connection with the theft of Scientology documents from various government offices and agencies in Washington, D.C.

During the time Defendant Armstrong worked on the biography project and acted as Hubbard Archivist, there was never any mention that he was not to be dealing with Hubbard's personal documents or that the delivery of those documents to Mr. Garrison was not authorized.

For the first year or more of the Hubbard biography and archive project, funding came from Hubbard's personal staff unit at Gilman Hot Springs, California. In early 1981, however, Defendant Armstrong's supervisor, Laurel Sullivan, ordered him to request that funding come from what was known as SEA Org Reserves. Approval for this change in funding came from the SEA Org Reserves Chief and Watch Dog Committee, the top Commodores Messenger Organization unit, who were Hubbard's personal representatives.

From November of 1980 through 1981, Defendant Armstrong worked closely with Mr. Garrison, assembling Hubbard's archives into logical categories, copying them and arranging the copies of the Archives materials into bound volumes. Defendant Armstrong made two copies of almost all documents copied for

Mr. Garrison - one for Mr. Garrison and the other to remain in Hubbard Archives for reference or recopying. Defendant Armstrong created approximately 400 binders of documents. The vast majority of the documents for Mr. Garrison came from Hubbard's personal Archives, of which Defendant Armstrong was in charge. Materials which came from other Archives, such as the Controller Archives, were provided to Defendant Armstrong by Scientology staff members who had these documents in their care.

It was not until late 1981 that Plaintiff was to provide person to assist on the biography project by providing Mr. Garrison with "Guardian Office' materials, otherwise described as technical materials relating to the operation of Scientology. The individual appointed for this task was Vaugh Young. Controller Archives and Guardian Office Archives had n connection to the Hubbard Archives, which Defendant Armstrong created and maintained as Hubbard's personal materials.

In addition to the assemblage of Hubbard's Archives, Defendant Armstrong worked continually on researching and assembling materials concerning Hubbard by interviewing dozens of individuals, including Hubbard's living aunt, uncle, and four cousins. Defendant Armstrong did a geneology study of Hubbard's family and collected, assembled, and read hundreds o thousands of pages of documentation in Hubbard's Archives.

During 1980 Defendant Armstrong remained convinced of Hubbard's honesty and integrity and believed that the representations he had made about himself in various publications were truthful. Defendant Armstrong was devoted t

Hubbard and was convinced that any information which he discovered to be unflattering of Hubbard or contradictory to what Hubbard has said about himself, was a lie being spread by Hubbard's enemies. Even when Defendant Armstrong located documents in Hubbard's Archives which indicated that representations made by Hubbard and the Organization were untrue, Defendant Armstrong would find some means to "explain away" the contradictory information.

Slowly, however, throughout 1981, Defendant Armstrong began to see that Hubbard and the Organization had continuously lied about Hubbard's past, his credentials, and his accomplishments. Defendant Armstrong believed, in good faith, that the only means by which Scientology could succeed in what Defendant Armstrong believed was its goal of creating an ethical environment on earth, and the only way Hubbard could be free of his critics, would be for Hubbard and the Organization to discontinue the lies about Hubbard's past, his credentials, and accomplishments. Defendant Armstrong resisted any public relations piece or announcement about Hubbard which the L. Ron Hubbard Public Relations Bureau proposed for publication which was not factual. Defendant Armstrong attempted to change and make accurate the various "about the author" sections in Scientology books, and further, Defendant rewrote or critiqued several of these and other publications for the L. Ron Hubbard Public Relations Bureau and various Scientology Organizations. Defendant Armstrong believed and desired that the Scientology Organization and its leader discontinue the perpetration of the

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massive fraud upon the innocent followers of Scientology, and the public at large.

Because of Defendant Armstrong's actions, in late November of 1981, Defendant was requested to come to Gilman Hot Springs by Commodore Messenger Organization Executive, Cirrus Slevin. Defendant Armstrong was ordered to undergo a "security check," which involved Defendant Armstrong's interrogation while connected to a crude Scientology lie detector machine called an E-meter.

The Organization wished to determine what materials Defendant Armstrong had provided to Omar Garrison. Defendant Armstrong was struck by the realization that the Organization would not work with him to correct the numerous fraudulent representations made to followers of Scientology and the public about L. Ron Hubbard and the Organization itself. Defendant Armstrong, who, for twelve years of his life, had placed his complete and full trust in Mr. and Mrs. Hubbard and the Scientology Organization, saw that his trust had no meaning and that the massive frauds perpetrated about Hubbard's past, credentials, and accomplishments would continue to be spread.

Less than three weeks before Defendant Armstrong left Scientology, he wrote a letter to Cirrus Slevin on November 25, 1981, in which it is clear that his intentions in airing the inaccuracies, falsehoods, and frauds regarding Hubbard were done in good faith. In his letter he stated as follows:

> "If we present inaccuracies, hyperbole or downright lies as fact or truth, it doesn't matter what slant we give them, if

disproved the man will look, to outsiders at least, like a charlatan. This is what I'm trying to prevent and what I've been working on the past year and a half.

. . .

"and that is why I said to Norman that it is up to us to insure that everything which goes out about LRH is one hundred percent accurate. That is not to say that opinions can't be voiced, they can. And they can contain all the hype you want. But they should not be construed as facts. And anything stated as a fact should be documentable.

"we are in a period when 'investigative reporting' is popular, and when there is relatively easy access to documentation on a person. We can't delude ourselves I believe, if we want to gain public acceptance and cause some betterment in society, that we can get away with statements, the validity of which we don't know.

"The real disservice to LRH, and the ultimate make-wrong is to go on assuming that everything he's ever written or said is one hundred percent accurate and publish it as such without verifying it. I'm

> talking here about biographical or non-technical writings. This only leads, should any of his statements turn out to be inaccurate, to a make-wrong of him, and consequently his technology.
>
> "That's what I'm trying to remedy and prevent.
>
> . . .
>
> "To say that LRH is not capable of hype, errors or lies is certanly ^sic! not granting him much of a beingness. To continue on with the line that he has never erred nor lied is counterproductive. It is an unreal attitude and too far removed from both the reality and people in general that it would widen public unacceptance.
>
> . . .
>
> ". . . That is why I feel the falsities must be corrected, and why we must verify our facts and present them in a favorable light."

The remainder of the letter contains examples of facts about Hubbard which Defendant Armstrong found to be wholly untrue or inaccurate and which were represented as true by the Hubbards and the Scientology Organization.

In December of 1981 Defendant Armstrong made the decision to leave the Church of Scientology. In order to continue in his commitment to Hubbard and Mr. Garrison in the biography project, he copied a large quantity of documents, which Mr. Garrison had requested or which would be useful to him for the biography. Defendant Armstrong delivered all of this material to Mr. Garrison the date he left the SEA Organization and kept nothing in his possession.

Thereafter, Defendant Armstrong maintained friendly relations with Hubbard's representatives by returning to the Archives office and discussing the various categories of materials. In fact on February 24, 1982, Defendant Armstrong wrote to Vaughn Young, regarding certain materials Mr. Young was unable to locate for Omar Garrison.

After this letter was written, Defendant Armstrong went to the Archives office and located certain materials Mr. Garrison had wanted which Hubbard representatives claimed they could not locate.

At the time Defendant Armstrong left the SEA Organization, he was disappointed with Scientology and Hubbard, and also felt deceived by them. However, Defendant Armstrong felt he had no enemies and felt no ill will toward anyone in the Organization or Hubbard, but still believed that a truthful biography should be written.

After leaving the SEA Organization, Defendant ARmstrong continued to assist Mr. Garrison with the Hubbard biography project. In the spring of 1982, Defendant Armstrong at Mr. Garrison's request, transcribed some of his interview tapes, copied some of the documentation he had, and assembled several more binders of copied materials. Defendant Armstrong also set up shelves for Mr. Garrison for all the biography research materials, worked on a cross-reference systems, and continued to do library research for the biography.

On February 18, 1982, the Church of Scientology International issued a "Suppressive Person Declare Gerry Armstrong," which is an official Scientology document issued against individuals who are considered as enemies of the Organization. Said Suppressive Person Declare charged that Defendant Armstrong had taken an unauthorized leave and that he was spreading destructive rumors about Senior Scientologists.

Defendant Armstrong was unaware of said Suppressive Person Declare until April of 1982. At that time a revised Declare was issued on April 22, 1982. Said Declare charged Defendant Armstrong with 18 different "Crimes and High Crimes and Suppressive Acts Against the Church." The charges included theft, juggling accounts, obtaining loans on money under false pretenses, promulgating false information about the Church , its founder, and members, and other untruthful allegations designed to make Defendant Armstrong an appropriate subject of the Scientology "Fair Game Doctrine." Said Doctrine allows any suppressive person to be "tricked, cheated, lied to, sued, or destroyed."

The second declare was issued shortly after Defendant Armstrong attempted to sell photographs of his wedding on board Hubbard's ship (in which Hubbard appears), and photographs belonging to some of his friends, which also included photos of L.R. Hubbard while in seclusion. Although Defendant Armstrong delivered the photographs to a Virgil Wilhite for sale, he never received payment or return of his friend's photographs. When he became aware that the Church had these photographs, he went to the Organization to request their return. A loud and boisterous argument ensued, and he eventually was told to leave the premises and get an attorney.

From his extensive knowledge of the covert and intelligence operations carried out by the Church of Scientology of California against its enemies (suppressive persons), Defendant Armstrong became terrified and feared that his life and the life of his wife were in danger, and he also feared he would be the target of costly and harassing lawsuits. In addition, Mr. Garrison became afraid for the security of the documents and believed that the intelligence network of the Church of Scientology would break and enter his home to retrieve them. Thus, Defendant Armstrong made copies of certain documents for Mr. Garrison and maintained them in a separate location.

It was thereafter, in the summer of 1982, that Defendant Armstrong asked Mr. Garrison for copies of documents to use in his defense and sent the documents to his attorneys, Michael Flynn and Contos & Bunch.

After the within suit was filed on August 2, 1982, Defendant Armstrong was the subject of harassment, including being followed and surveilled by individuals who admitted employment by Plaintiff; being assaulted by one of these individuals; being struck bodily by a car driven by one of these individuals; having two attempts made by said individuals apparently to involve Defendant Armstrong in a freeway automobile accident; having said individuals come onto Defendant Armstrong's property, spy in his windows, create disturbances, and upset his neighbors. During trial when it appeared that Howard Schomer (a former Scientologist) might be called as a defense witness, the Church engaged in a somewhat sophisticated effort to suppress his testimony. It is not clear how the Church became aware of defense intentions to call Mr. Schomer as a witness, but it is abundantly clear they sought to entice him back into the fold and prevent his testimony.

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EXHIBIT B

DEPT. 57

JUL 2 3 1984

JULY 20,1984 SUPERIO URT OF CALIFORNIA, COUNTY OF LOS A ES

NC BLE P G BRECKENRIDGE, JR JUDGE | E HART Deputy Clerk

Deputy Sheriff | NONE Reporter

J ANDERSON, COURT ATTENDANT | (Parties and counsel checked if present)

C 420 153
CHURCH OF SCIENTOLOGY OF CALIFORNIA,
VS
GERALD ARMSTRONG,

MARY SUE HUBBARD - INTERVENOR

Counsel for Plaintiff

Counsel for Defendant

NATURE OF PROCEEDINGS REQUEST OF DEFENDANT THAT MEMORANDUM BE DEEMED STATEMENT OF DECISION

Plaintiffs not having requested such, the Court grants defendant's motion, and the Memorandum of Intended Decision will henceforth be deemed the Court's "Statement of Decision".

A copy of this minute order is mailed to all counsel.

049

MINUTES ENTERED
7-20-84
COUNTY CLERK

EXHIBIT C

BRUCE BUNCH
CONTOS & BUNCH
5855 Topanga Canyon Boulevard
Suite 400
Woodland Hills, CA 91367
(818) 716-9400

Attorneys for Cross-Complainant
Gerald Armstrong

JOHN G. PETERSON
PETERSON AND BRYNAN
8530 Wilshire Boulevard, Suite 407
Beverly Hills, California 90211
(213) 659-9965

Attorneys for Plaintiff and Cross-Defendant
CHURCH OF SCIENTOLOGY OF CALIFORNIA

ORIGINAL FILED
DEC 11 1986
COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California Corporation,

Plaintiff,

v.

GERALD ARMSTRONG,

Defendant.

AND RELATED CROSS-ACTION.

Case No. C 420153

STIPULATED SEALING ORDER

Pursuant to and as a provision of a Settlement Agreement of the parties hereto, which is dispositive of all claims of the above captioned case, the parties hereby voluntarily enter into the following stipulation:

1. Defendant/Cross-Complainant hereby agrees that the Clerk of the Court will produce to Plaintiff/Cross-Defendant

the following records in the Custody of the Clerk:

a) All those documents surrendered to the custody of the Clerk of the Court by Michael Flynn and the law firm of Contos & Bunch in September 1982, pursuant to the Order of Judge John J. Cole in the above captioned case, dated September 4, 1982; and b) all exhibits entered into evidence or marked for identification at the trial of this case in May - June of 1984.

2. The entire remaining record of this case, save only this order, the order of dismissal of the case, and any orders necessary to effectuate this order and the order of dismissal, are agreed to be placed under the seal of the Court.

3. It is agreed between the parties that should the Court require a motion or any further pleadings to effectuate and sign this Stipulated Sealing Order, the parties will jointly comply with the Court's further orders, if any.

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4. This agreement is effective as of the date of the dismissal of this case.

DATED: 12 - 8, 1986

~~BRUCE BUNCH~~ JULIA DRAGOJEVIC
CONTOS & BUNCH
5855 Topanga Canyon Boulevard
Suite 400
Woodland Hills, CA 91367
(818) 716-9400

Counsel for
Defendant/Cross-Complainant

John G. Peterson
JOHN G. PETERSON
PETERSON & BRYNAN
8530 Wilshire Boulevard
Suite 407
Beverly Hills, California 90211
(213) 659-9965

Counsel for Plaintiff/Cross-Defendant

IT IS SO ORDERED.

/S/ PAUL G. BRECKENRIDGE, JR. DEC. 11, 1986 Dated
HON. PAUL G. BRECKENRIDGE

EXHIBIT D

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GERALD ARMSTRONG, Cross-Complainant, v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California Corporation, Cross-Defendant.	No. C 420 153 (Severed Action) ORDER DISMISSING ACTION WITH PREJUDICE

ORIGINAL FILED
DEC 11 1986
COUNTY CLERK

Upon consideration of the parties' Stipulation for Dismissal, the "Mutual release of All Claims and Settlement Agreement" and the entire record herein, it is

ORDERED AND ADJUDGED:

1. That this action is dismissed with prejudice.

2. That an executed duplicate original of the parties' "Mutual Release of All Claims and Settlement Agreement" filed herein under seal shall be retained by the Clerk of this Court under seal.

Dated: December 11, 1986

/s/ PAUL G. BRECKENRIDGE, JR.
Hon. Paul G. Breckenridge

EXHIBIT E

Margery WAKEFIELD, Plaintiff,

v.

The CHURCH OF SCIENTOLOGY OF CALIFORNIA, Defendant–Appellee,

Times Publishing Company and Tribune Company, Appellants.

No. 89–3796.

United States Court of Appeals,
Eleventh Circuit.

Aug. 12, 1991.

Religious organization sought orders to show cause why plaintiff, which had brought suit against organization, should not be held in civil and criminal contempt for violating confidentiality requirement of settlement agreement. Newspapers' motions for access to contempt hearings and related pleadings, proceedings, and records, to determine if their reporters' qualified privilege prevented them from being compelled to testify, was denied by the United States District Court for the Middle District of Florida, No. 82-1313 CIV-T-10, Elizabeth A. Kovachevich, J., and newspapers appealed. The Court of Appeals, Hatchett, Circuit Judge, held that newspapers' appeal from order denying them access to contempt hearings did not fall within capable of repetition, yet evading review exception to mootness doctrine.

Case dismissed.

1. Federal Courts ⇐721

Newspapers' appeal from order denying newspapers' motions for access to evidentiary hearing at which hearing newspaper reporters had been subpoenaed did not satisfy requirements for capable of repetition, yet evading review exception to mootness doctrine after hearing was held, and newspaper which had reported on case did not seek to intervene until two years after closure, and case involved unique circumstances, such as plaintiff's "constant disregard and misuse of the judicial process," on which closure order was based. U.S.C.A. Const.Amend. 1.

2. Federal Courts ⇐611

Parties may make alternative claims, change claims, or sometimes file inconsistent claims, but may not do so in appellate court. Court of Appeals reviews case tried in district court and does not try ever-changing theories parties fashion during appellate process.

3. Federal Courts ⇐723

When addressing mootness, Court of Appeals determines whether judicial activity remains necessary.

4. Federal Courts ⇐723

Three exceptions to mootness doctrine exist: issues are capable of repetition yet evading review; appellant has taken all steps necessary to perfect appeal and to preserve status quo; and trial court's order will have possible collateral legal consequences.

5. Federal Courts ⇐723

Capable of repetition, yet evading review exception to mootness doctrine applies if challenged action is of too short a duration to be fully litigated prior to its cessation, and reasonable expectation exists that same complaining party will be subject to same action again.

Synopsis, Syllabi and Key Number Classification
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The Synopsis, Syllabi and Key Number Classification constitute no part of the opinion of the court.

6. Federal Courts ⚬=723

Mere hypothesis or theoretical possibility is insufficient to satisfy test for capable of repetition, yet evading review exception to mootness doctrine.

Appeal from the United States District Court for the Middle District of Florida.

Before HATCHETT and COX Circuit Judges, and HENDERSON, Senior Circuit Judge.

HATCHETT, Circuit Judge:

We dismiss this case, which at one time touched upon important first amendment issues, because the case has been rendered moot.

FACTS

Margery Wakefield and three other plaintiffs alleged that the Church of Scientology of California (the Church) committed various wrongful acts against them. On August 14, 1986, Wakefield, the other plaintiffs, and the Church entered into a settlement agreement which included provisions enjoining Wakefield and the other plaintiffs from discussing, with other than immediate family members, (1) the substance of their complaints against the Church, (2) the substance of their claims against the Church, (3) alleged wrongs the Church committed, and (4) the contents of documents returned to the Church. The district court approved the settlement agreement, sealed the court files, and dismissed the case with prejudice. The dismissal order specifically gave the court jurisdiction to enforce the settlement terms. Nonetheless, Wakefield publicly violated the settlement agreement's confidentiality provisions.

In 1987, both the Church and Wakefield filed motions to enforce the settlement agreement. The district court requested that a magistrate judge address whether either party had violated the settlement agreement. On September 9, 1988, the magistrate judge issued a report and recommendation which concluded that Wakefield had violated the settlement agreement, and the Church had fully complied with the agreement's terms and conditions. On November 3, 1988, the Times Publishing Company (the Times), which publishes the *St. Petersburg Times*, moved to intervene in this lawsuit, to unseal the court files, and to gain access to any contempt hearings. In its motions, the Times alleged that the sealed court records and closed proceedings violated its and the public's constitutional and common law rights of access to judicial proceedings and records. In opposing the motions, the Church argued that they were untimely and barred by laches. On May 16, 1989, the district court adopted the magistrate judge's report, issued a preliminary and permanent injunction against Wakefield, and referred the Times's motion to intervene to the magistrate judge.

Notwithstanding the court's injunction, Wakefield continued to publicize the lawsuit. Thus, on July 18, 1989, the Church sought orders to show cause why Wakefield should not be held in civil and criminal contempt. The Church also sought damages, costs, and attorney's fees. To support its requests, the Church submitted excerpts of newspaper, television, and radio interviews attributed to Wakefield.

On August 15, 1989, the magistrate judge submitted a report and recommendation addressing Times's motion to intervene. He recommended that absent a compelling reason, all future proceedings and the court files, except for documents pertaining to the settlement, should be open and that Times be allowed to intervene. Due to events discussed later in this opinion, the district court has not issued a final order on these issues.

The district court scheduled an evidentiary hearing to address the Church's contempt motion. As witnesses at the hearing, the Church subpoenaed reporters for the *St. Petersburg Times* and the *Tampa Tribune*. Consequently, the Times, and the Tribune Company, which publishes the *Tampa Tribune* (the newspapers), filed motions for access to hearings, pleadings, proceedings, and records related to the contempt hearings in order to determine if their reporters' qualified privilege prevented them from being compelled to testify.

PROCEDURAL HISTORY

On September 11, 1989, the district court held an *in camera* proceeding to rule on the newspapers' motions. The district court denied the newspapers' motions for access to the hearings because the Church subpoenaed the reporters only to establish the source and accuracy of the statements attributed to Wakefield. The district court also held that the reporters waived any privilege by publicly attributing the statements to Wakefield.

In considering the newspapers' motions, the district court stated, "due to the plaintiff's complete and utter disregard of prior orders of this court, the court concludes that any restriction short of complete closure would be ineffective." It further held that "[p]ublicity of a private crusade has become her end, not the fair adjudication of the parties' dispute. In doing so, plaintiff is stealing the court's resources from other meritorious cases." Thus, the district court closed the contempt proceedings to the public and the press referring further proceedings to a United States Magistrate Judge. The magistrate judge began contempt hearings on September 11, 1989.

On September 18, 1989, the newspapers filed a Notice of Appeal, a Motion for Expedited Appeal, and a Motion for Stay Pending Appeal. On September 29, 1989, this court granted expedited appeal, but denied the newspapers' emergency motion for a stay of the contempt proceedings pending resolution of the expedited appeal.

On appeal, the newspapers argued that the closure violated their first amendment and common law rights of access to judicial proceedings. They contended that the public's right of access outweighs the rationale for keeping the settlement agreement confidential. The Church contended that Wakefield's "open and defiant contumacious conduct" mandated closure and that the newspapers did not enjoy an absolute constitutional or common law right of access to civil proceedings.

During our first oral argument, we learned that the newspapers had never requested the district court to allow access to the contempt hearing transcripts. Since the hearings had been completed before oral argument, we issued a November 17, 1989, order which temporarily remanded the case to the district court for the limited purpose of allowing the newspapers to seek access to the contempt hearing transcripts. The order further instructed the district court to rule on such a request "within a reasonable time."

On June 25, 1990, eight months after the last contempt hearing, the magistrate judge submitted a report and recommendation which concluded that Wakefield had willfully violated the court's injunction. He further held that while a civil contempt finding could be appropriate, he suggested the case be referred to the United States Attorney's office for prosecution on the criminal contempt charges. The district court has not issued a final order addressing whether Wakefield is in civil or criminal contempt.

Furthermore, almost a year after our temporary remand, the district court had not ruled on the newspapers' requests for access to the contempt hearing transcripts. Thus, the newspapers filed a motion requesting that this court clarify the "reasonable time" language in the November 17, 1989 order. In order to speed finalization of this matter, this court denied the clarification motion, but issued an order stating, "[a]fter December 3, 1990, this court will entertain a request for relief addressing the delay that has occurred since our remand to the district court provided that relief has been sought." After this clear signal for action, the district court issued a November 21, 1990, order unsealing the civil contempt proceeding transcripts, except for those portions which disclosed the settlement agreement terms.

On March 21, 1991, the newspapers filed a motion requesting a second oral argument, which the Church opposed. On April 18, 1991, we granted the newspapers' motions for a second oral argument, instructing the parties to address (1) whether the case was moot, (2) whether a case or controversy remained, and (3) whether a reasonable possibility of settlement existed.

ISSUE

The sole issue we discuss is whether this case is moot.

CONTENTIONS

The newspapers argue that this case is not moot because the court can grant relief which will affect the parties by ordering release of all the judicial documents relating to the contempt hearing and the unreleased transcript pages.

The Church contends that this case is moot and does not present a case or controversy which this court may address. It emphasizes that the newspapers initially sought access to the proceedings to represent their reporters, then under subpoena. It argues that this aspect of the case is absolutely moot because the Church released the reporters from their subpoenas.

DISCUSSION

[1, 2] This case, at its beginning, presented an interesting and important issue: under what circumstances may civil judicial proceedings be closed to the public and the press? Unfortunately, the newspapers did not prevail in their efforts to halt the proceedings; this court denied their motions to stay the proceedings pending the expedited appeal. The newspapers argue that we should address whether a constitutional right of access to civil proceedings exists. To do so, however, would constitute an advisory opinion. The hearing that is the subject of this case terminated almost two years ago. Although the newspapers have an interest in the constitutional question, perhaps for future cases, no "live" case or controversy remains in this case. The hearings have been completed, and the newspapers have been given the hearing transcripts.[1]

[3] When addressing mootness, we determine whether judicial activity remains necessary. *Warth v. Seldin*, 422 U.S. 490, 499, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343 n. 10 (1975). "A case becomes moot, and therefore, nonjusticiable, as involving a case or controversy, 'when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.'" *B & B Chemical Co. v. United States E.P.A.*, 806 F.2d 987, 989 (11th Cir.1986) (quoting *United States v. Geraghty*, 445 U.S. 388, 396, 100 S.Ct. 1202, 1208, 63 L.Ed.2d 479 (1980)).

[4] Three exceptions to the mootness doctrine exist: (1) the issues are capable of repetition, yet evading review; (2) an appellant has taken all steps necessary to perfect the appeal and to preserve the status quo; and (3) the trial court's order will have possible collateral legal consequences. *B & B Chemical Co.*, 806 F.2d at 990.

The newspapers argue that this case falls within the "capable of repetition yet evading review" mootness exception. They argue that a case is not moot if this court can grant relief that affects the interested parties. *Airline Pilots Association v. U.A.L. Corp.*, 897 F.2d 1394 (7th Cir.1990); *Wilson v. U.S. Department of Interior*, 799 F.2d 591 (9th Cir.1986). Thus, they assert that we should order the release of all the judicial documents related to the contempt hearing and the unreleased transcript pages. In their view, these documents are essential so that the public can understand what happened to Wakefield.

[5] The newspapers do not meet the exceptions' two conditions in order for the capable of repetition, yet evading review exception to apply: (1) the challenged action must be of too short a duration to be fully litigated prior to its cessation, and (2) a reasonable expectation must exist that the same complaining party will be subject to the same action again. *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S.Ct. 347, 348, 46 L.Ed.2d 350 (1975).

As an example of the action's short duration, the newspapers assert that they acted promptly by filing during the contempt proceeding's adjournment a motion for a stay pending the appeal of the district court's closure. The record refutes this assertion. The underlying case has been in the federal court system since November 29, 1982. Even prior to the 1986 closure, the Times reported on the Wakefield case, but not until 1988, did Times seek to intervene. Additionally, the newspapers did not appeal the closure order until the contempt hearing had been adjourned for a continuance. These facts refute the newspapers' assertions of the action's short duration.

Likewise, the newspapers cannot satisfy the second condition. In addressing the second condition, the newspapers argue that if this court does not offer judicial guidance, a "reasonable expectation" exists that this controversy will occur again. They specifically state that they "continue to expect and suspect that secret church proceedings are being or will be held," and suspect that the Church will bring contempt proceedings against the other plaintiffs. The record does not support these suspicions.

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[1] It is also noteworthy that the newspapers have changed their claims as the case has progressed. They first sought access on constitutional and common law grounds; then they sought access to protect their reporters from compelled testimony. Finally, with full knowledge that the hearings had been completed, the newspapers never sought the hearing transcripts until prompted to do so by this court. Now, with all but eleven pages of the hearing transcript, the newspapers seek the eleven pages on constitutional and common law grounds. Many of the theories presented to this court were never presented to the district court. Parties may make alternative claims, may change claims, may sometimes file inconsistent claims, but parties may not do so in the appellate court. This court reviews the case tried in the district court; it does not try ever-changing theories parties fashion during the appellate process.

[6] This case involves unique circumstances which are not easily repeated. Wakefield's constant disregard and misuse of the judicial process mandated partial closure. Since Wakefield's contempt hearing concluded, the Church has not instituted nor has the district court conducted any additional contempt hearings, show cause hearings, or *in camera* proceedings. Furthermore, nothing indicates that the Church contemplates these actions. Although the newspapers' suspicions that secret church and contempt proceedings will occur constitute a theoretical possibility, a mere hypothesis or theoretical possibility is insufficient to satisfy the test stated in *Weinstein* *Morgan v. Roberts*, 702 F.2d 945, 947 (11th Cir.1983). Thus, no "reasonable expectation" exists that this controversy will occur again.[2]

The newspapers' interest in the important constitutional issue which was once alive in this case is understandable. Nevertheless, we must wait for another case with a current controversy, and with a well-developed record to address the issue. The fact that much of the delay in this case is attributable to a busy and overburdened federal district court is unfortunate.

Because the newspapers cannot satisfy the capable of repetition, yet evading review requirements, this case is moot. Accordingly, this case is dismissed.[3]

DISMISSED.

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[2] As earlier noted, the hearings were not halted because the newspapers did not prevail on their motions for stay pending appeal. We must assume that in the proper cases stays will be granted.

[3] We express no opinion on whether the remaining eleven pages of the transcripts may properly be sought in another federal lawsuit.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On September 11, 1991, I caused to be served the foregoing document described as NOTICE OF MOTION AND MOTION TO SEAL RECORD ON APPEAL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KENNETH LONG on interested parties in this action as below:

Gerald Armstrong
P.O. Box 751
San Anselmo, CA 94960

Gerald Armstrong
707 Fawn Drive
Sleepy Hollow, California 94960

Toby L. Plevin
Attorney at Law
10700 Santa Monica Blvd.
Suite 4300
Westwood, CA 90025

Los Angeles Superior Court
111 N. Hill Street
Los Angeles CA 90012

If hand service is indicated, I caused the above-referenced paper to be served by hand, otherwise I caused such envelopes with postage thereon fully prepaid to be placed in the United States mail at Hollywood, California.

Executed on September 11, 1991, at Hollywood, California.

Helena K. Kobrin

Case Nos. B025920 and B038975

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,
Plaintiff-Appellant,
and
MARY SUE HUBBARD
Intervenor-Plaintiff-Appellant,
v.
GERALD ARMSTRONG,
Defendant-Respondent.

OPPOSITION TO MOTION TO SEAL RECORD ON APPEAL; DECLARATION OF GERALD ARMSTRONG

Appeal from the Superior Court of the State
of California for the County of Los Angeles
Honorable Bruce R. Geernaert, Judge
Case No. C420153

Gerald Armstrong
In Pro Per
P.O. Box 751
San Anselmo, CA 94960
(415)456-8450

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,
Plaintiff-Appellant,
and
MARY SUE HUBBARD,
Intervenor-Appellant,
v.
GERALD ARMSTRONG,
Defendant-Respondent.

Case Nos. B025920 & B038975

LASC No. C420153

OPPOSITION TO MOTION TO SEAL RECORD ON APPEAL

I

INTRODUCTION

Defendant Gerald Armstrong opposes plaintiffs' motion to seal the record on appeal. Plaintiffs have made no showing to justify sealing the record, by their own actions they have waived any privacy rights they are now seeking to protect, and such a sealing order would be both senseless and violative of rights senior to those plaintiffs hope to vindicate.

Plaintiffs ask this Court to seal these portions of the appellate record: in Appeal No B025920 the trial testimony of defendant and witnesses Vaughn Young and Laurel Sullivan, pages 57-60 and 251-277 in Appellants' Appendix and pages 4-28 of Respondent's Brief; and in Appeal No. B038975

Exhibits C, K, L and N in Appellants' Appendix. Plaintiffs claim that these portions contain discussions of or references to the documents which were the subject of the litigation below, and they argue that sealing these portions will preserve their property and privacy interests.

Plaintiffs have not only not demonstrated that they possess any property or privacy interests in the materials they seek to seal, but they have long since lost, through their employment of public courts in this case, their attacks on defendant in legal and other public arenas, and their unclean hands in the matter before this Court, the rights they once had.

But even if plaintiffs had not lost all their privacy rights in these materials the requested sealing would be an idle act in which the law does not engage. The vast majority of the pages plaintiffs want sealed are public documents which for over seven years have been broadly circulated. Sealing is also rendered a meaningless act because defendant could not be bound by such an order while plaintiffs continue to attack him and use themselves sealed materials in their attacks.

The superior rights regarding the materials plaintiffs want sealed are those of defendant whose safety from attack rests in part on the availability of information and the openness of court files, and those of the public who have a Constitutional right to precisely the kind of information these materials contain.

II

BY THEIR OWN CHOICES PLAINTIFFS SACRIFICED THEIR RIGHT TO SEAL THE RECORD

Although specifically discussing probate court files the California Court of Appeal in Estate of Hearst (1977) 67 Cal. App. 3d 777, 136 Cal. Rptr. 821 spells out the risk that every litigant who uses the courts accepts.

> "when individuals employ the public powers of state courts to accomplish private ends,[ ] they do so in full knowledge of the possibly disadvantageous circumstance that the documents and records filed[ ] will be open to public inspection." Id at 783

Plaintiffs complain that unlike the appellants in Hearst they had no way of recovering the subject documents other than bringing the lawsuit or "seizing the documents" from defendant, which choice plaintiffs considered inappropriate. But those were not plaintiffs' only options; they were but the options plaintiffs' "fair game" policy mandated. Had plaintiffs eschewed fair game, acted decently toward defendant and desisted in their attacks 1/ it is entirely conceivable that none of the subject documents would have been made public through the court proceedings. As this Court noted in its decision of July 29, 1991 in Church of Scientology of California v. Armstrong, 283 Cal. Rptr.917, 924 "the conflict was created by plaintiffs, who threatened Armstrong with harm."

When plaintiffs chose after settlement of the cross complaint to maintain their appeal from the trial court's decision they again did so with full knowledge of the disclosure in the Court of Appeal of the contents of the file that had been sealed by stipulation between the parties. In fact plaintiffs in their briefs cite to documents they had removed from the court file following the December 1986 settlement 2/, and quote directly from the

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1/ See, e.g. Defendant's trial exhibits PP Suppressive Person Declare of Gerry Armstrong of February 18, 1982, and M Suppressive Person Declare of Gerry Armstrong of April 22, 1982.

2/ See, e.g. Appellants' Brief (dated December 20, 1989) p. 9 and 14, quoting from trial Exhibit F, and p. 26, discussing exhibit AAA.

trial transcript they now seek to seal 3/. In Champion v. Superior Court (1988) 201 Cal. App. 3d 777, 247 Cal. Rptr. 630, which set out the procedure to be followed when seeking an order to seal documents in appellate records, the Court stated:

> "Parties must also be careful not to enter into stipulations in trial courts or to acquiesce to trial court confidentiality requests expecting that the stipulations or rulings will control the filing or lodging of documents in the appellate courts." Id at 789.

The Champion Court also concluded

> "that a party seeking to lodge or file a document under seal bears a heavy burden of showing the appellate court that the interest of the party in confidentiality outweighs the public policy in favor of open court records." Id at 788.

Plaintiffs not only did not meet their burden, they did not even seek, until seven years had elapsed, to seal any of the documents in the record on appeal. This Court found that third party litigant Bent Corydon's motion to unseal the Armstrong court file, which was brought within two years of the sealing, was untimely. Plaintiffs' motion to seal is no less so.

Two days prior to filing their motion to seal the record on appeal plaintiffs filed a Petition For Review in the California Supreme Court from this Court's July 29 order. Again plaintiffs have cited to trial exhibits which

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3/ See, e.g., Appellants' Brief, from defendant's trial testimony, p. 14, "nothing but an intelligence organization." (R.T. 1678-79), p. 21, "lied from his earliest youth all the way through and he was lying to me currently" (R.T. 1929) are not available to the reviewing court [4] and to portions of the record they seek to seal.[5] Plaintiffs have not filed a request to seal the record on appeal in the Supreme Court, and they are using the record they seek here to seal to forward their cause. Judicial estoppel would prevent the granting of plaintiffs' motion.

Defendant detailed what he knew of plaintiffs' acts against him in violation of the December 1986 settlement agreement in his declaration of March 15, 1990, filed in this appeal in support of Defendant's Reply To Appellants' Opposition To Petition For Permission To File Response And For Time, and his declaration of December 25, 1990, filed as Defendant's Appendix. These declarations and the exhibits thereto are of substantial consequence to the determination of rights of the parties herein, and defendant requests that this Court take Judicial Notice of them pursuant to California Evidence Code§452(d) (court records),§455 and§459(b) (reviewing court has same power as trial court in determining propriety of taking judicial notice of a matter). This Court did not consider these declarations in its decision "as they were not considered by the trial court," Armstrong at 922, but they are relevant to the sealing issue and now may properly be considered.

While plaintiffs falsely accuse defendant of violations of sealing orders in this case they have themselves violated the sealing orders, including by use of the very trial exhibits they removed from the court file. 6/ But plaintiffs have not only not curtailed their use of the materials they move to seal, they actively pervert what these materials state. Such a perversion is contained within plaintiffs' motion. When refering to defendant's act of obtaining from author Omar Garrison documents he would use in defending himself, and sending these documents to the lawyer who would and did defend him, plaintiffs religiously employ the words "stole", "stealing" or "stolen". Plaintiffs' motion, pp. 1, 3, 5, 6, 8, 17. Stealing is a "felonious taking." Black's Law Dictionary, 4th Ed. Rev., 1583. The trial court and this Court specifically found defendant's "taking" of the subject documents not felonious, but justified. Plaintiffs now seek to have hidden from the world not only defendant's testimony, which the trial court relied on to understand defendant's justification, but the trial court's decision in which the judge's

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[4] See, e.g. Petition For Review, p. 9, trial exhibit AAAA, p. 11, trial exhibit F, p. 16, trial exhibit PP.

[5] See, e.g. Petition For Review, p. 15, "nothing but an intelligence organization." (R.T. 1678-79), p. 16, confrontations with private investigators (R.T. 1726, 1728, 2448)

6/ Exhibits F,G,H,J and K to defendant's declaration of March 15, 1990 are affidavits of Kenneth Long executed in October 1987 and filed in the case of Church of Scientology of California v. Russell Miller & Penguin Books Limited in the High Court of Justice, Case No. 6140 in London, England. Mr. Long, e.g., swears that defendant "refused to obey an order of the court, and retained possession of documents which he had been ordered to surrender to the court for safekeeping under seal," Ex. F, and "knowingly violated several court orders -- the August 24, 1982 court order to turn in all materials to the court and the June 20, 1984 court order sealing the documents.." Ex. J. Mr. Long appended to his affidavits several documents which had been entered into evidence at the trial in Armstrong and which plaintiffs had retrieved from the court file after the signing of the December 1986 "Mutual Release and Settlement Agreement," (emphasis added) and after the sealing pursuant to stipulation. See, e.g., Ex. F to defendant's declaration of March 15, 1990, affidavit of Kenneth David Long dated October 5, 1987. Document entitled "Wage and Tax Statement 1977" for "Gerald David Armstrong" is trial exhibit V; document entitled "Nondisclosure and Release Bond" is trial exhibit U.

understanding is expressed. Pp 251-277 in Appellants' Appendix in Appeal No. B025920 and Ex. C in Appellants' Appendix in Appeal No. B038975. Plaintiffs' intention is to seal parts of the record so that they can create confusion around what the record contains and misstate it in attacks on critics of their antisocial acts and attitude.

In the past two months plaintiffs have thrown caution to the wind in their attack on defendant's credibility, and are boldly using the fruits of a Scientology initiated illegal intelligence action they call the "Armstrong operation," which are included in the documents plaintiffs have "successfully" kept under seal in the Armstrong court file. Plaintiffs were apparently encouraged by this Court's decision in Armstrong which maintained the seal on the documents relating to the cross-complaint in the court file, because they have subsequently used them with abandon.

Plaintiffs-appellants utilize some tidbits from the "Armstrong operation" in their recently filed Petition for Rehearing in this Court. Petition for Rehearing, n.1, p. 6. They use their operation as grounds for a $120,792,850 lawsuit against 17 Federal (Treasury Department) agents. And they use it in an attempt to derail a lawsuit by former organization members in Federal District Court.

Exhibit A to the declaration of Gerald Armstrong filed herewith is a copy of the complaint filed August 12, 1991 in Church of Scientology International v. 17 Agents, No. 91-4301 SVW in US District Court, Central District of California. At page 14 is the claim that

> "The infiltration of the Church was planned as an undercover operation by the LA CID along with former Church member Gerald Armstrong, who planned to seed church files with forged documents which the IRS could then seize in a raid. The CID

> actually planned to assist Armstrong in taking over the Church of Scientology hierarchy which would then turn over all church documents to the IRS for their investigation." Ex. A.

Attorneys for the Scientology organization in the 17 Agents case are also attorneys of record in Armstrong and are before this Court now asking for another sealing order.

Exhibit B filed herewith is a pleading entitled Further Response to Order of July 2, 1985; Request for Stay; Memorandum of Points and Authorities in Support Thereof; Declaration of John G. Peterson filed January 22, 1986 in Armstrong along with transcripts of the illegal videotape operation. Plaintiffs used these documents at that time in an effort to prevent defendant from obtaining his preclear folders from plaintiff organization. At p. 6 Mr. Peterson avers that:

> "Armstrong has admitted, in a videotaped interview, to creating forged documents for placement in Church files for the sole purpose of giving the false appearance of unethical or illegal actions committed by the Church; and [ ] Armstrong has admitted, in a videotaped interview, his intention to commit perjury, as well as advising others that proof is not required to make allegations." Ex. B.

This is a matter which plaintiffs have insisted be sealed in the trial court's file.

Exhibit C filed herewith is a pleading entitled "Supplemental Memorandum in Support of Defendants' Motion to Dismiss Complaint with Prejudice; Declarations of Sam Brown, Thorn Smith, Edward Austin, Lynn R. Farny and Laurie Bartilson" filed August 26, 1991 in Aznaran v. Church of Scientology of California, et al, No. CV 88-1786 JMI in US District Court for the Central District of California. At p. 5 the Scientology organizations state:

> "In November 1984 [ ] Armstrong was plotting against the Scientology Churches and seeking out staff members in the Church who would be willing to assist him in overthrowing Church leadership. The Church obtained information about Armstrong's plans and, through a police-sanctioned investigation, provided Armstrong with the "defectors" he sought." Ex. C.

Exhibit D filed herewith is a pleading entitled "Reply in Support of Defendants' Motion for Summary Judgment Based on Statute of Limitations" also filed August 26, 1991 in Aznaran. At p. 34 the Scientology organizations state:

> "Armstrong's philosophy of litigation is that facts and the truth are irrelevant and that all that is required to prevail is to allege whatever needs to be alleged is spelled out in a videotape of Armstrong made in 1984 as part of a police-authorized private investigation of individuals, including Armstrong, who attempted to seize control of the Church." Ex. D.

Scientology's reply is signed by Eric Lieberman who has been plaintiffs' attorney of record throughout the Armstrong appeals.

Exhibit E filed herewith is defendant's declaration executed on September 3, 1991 and filed in Aznaran to refute the charges made by the Scientology organization in their pleadings (Ex. C and D filed herewith) and in another pleading entitled "Defendants' Opposition to Ex Parte Application to File Plaintiffs' Genuine Statement of Issues [sic] Re Defendants' Motions (1) to Exclude Expert Testimony; and (2) for Separate Trial on Issues of Releases and Waivers: Request that Oppositions Be Stricken" also filed in Aznaran August 26, 1991, and filed herewith as Exhibit F.

Since the December 1986 settlement, plaintiffs have engaged in assault after assault on defendant's character and credibility rather than honestly face the malevolent nature of their fair game doctrine and the acts this philosophy spawns. 7/ The portions of the appellate record they now seek to seal contain the trial judge's observations of defendant's credibility 8/ and the record in toto supports the judge's assessment of defendant's credibility and confutes plaintiffs' calumny.

7/ See, e.g., Exhibit E to declaration of March 15, 1990, a document circulated by plaintiff organization in 1987, "Armstrong's numerous false claims and lies on other subject matters;" Exhibits F, G, H, J and K to 3-15-90 declaration, affidavits of Kenneth Long accusing defendant of sealing order violations; Exhibit H, "Gerald Armstrong has been an admitted agent provocateur of the U.S. Federal Government;" Exhibit I to 3-15-90 declaration, affidavit of Sheila MacDonald Chaleff, "Mr. Armstrong is known to me to be a US government informant who has admitted on video tape that he intended to plant forged documents within the Church of Scientology and then using the contents to get the Church raided where these forged documents would be found and used against the Church;" Exhibit E to defendant's declaration of 25 December 1990, declaration of Kenneth Long dated March 26, 1990, "Armstrong had intentially perjured himself on numerous occasions, and had as well knowingly violated orders issued by judges at all levels ranging from the Los Angeles Superior Court to the Supreme Court of the United States;" Exhibit C filed herewith , at p. 6, defendant's "criminal attitude;" Exhibit D filed herewith, at p. 2,3, "the utter disregard of the truth that the Aznarans have made the trademark of their litigation effort, bears the unmistakable signature of Gerald Armstrong, whose theory of litigating against Churches of Scientology, as captured on videotape in 1984, is not to worry about what the facts really are, but instead to choose a state of "facts" that should survive a challenge by the Church and "just allege it."

8/ Memorandum of Intended decision in Armstrong, at p. 255 of Appellants' Appendix, " the basic thrust of [defendant's] testimony is that he did what he did, because he believed that his life, physical and mental well being, as well as that of his wife were threatened because the organization was aware of what he knew about the life of LRH, the secret machinations and financial

Plaintiffs assert that they "made every effort to vindicate their privacy interests without doing them further damage;" Motion, p. 11, but in reality they have worked very hard to destroy whatever rights they once had. The trial court found in 1984 that "neither plaintiff has clean hands." Memorandum of Intended Decision, Appellants' Appendix at p. 251. Plaintiffs have a history of destruction of evidence. Memorandum of Intended Decision, Appellants' Appendix at p. 264, July 29, 1991 Opinion at p. 6. Here they have used the documents they want sealed in attacks on defendant. Plaintiffs' hands are still unclean in connection with the controversy before this Court so must be denied the relief they seek. See, e.g., Moriarty v. Carlson (1960) 184 Cal. App. 2d 51, 7 Cal. Rptr. 282, quoting from Lynn v. Duckel, 46 Cal. 2d 845, 299 P.2d 236:

> "The rule is settled in California that whenever a party who, as actor, seeks to set judicial machinery in motion and obtain some remedy, has violated conscience, good faith or other equitable principle in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf to acknowledge his right, or to afford him any remedy." Id at 850.

Footnote 8 continued

activities of the Church, and his dedication to the truth;" p. 257 of Appellants' Appendix, "the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis (sic) Edward Walters, Omar Garrison, Kima Douglas and Homer Schomer to be credible, extremely persuasive, and the defense of privilege or justification established or corroborated by this evidence.....In all critical and important matters, their testimony was precise, accurate, and rang true;" . R.T. at 2511, Judge Paul G. Breckenridge, Jr., commenting to plaintiffs' counsel during cross-examination of defendant, "all you are doing is convincing me that this man has a fabulous memory."

III

SEALING THE DESIGNATED PORTIONS OF THE RECORD ON APPEAL WOULD BE NONSENSICAL

The trial testimony of defendant, Vaughn Young and Laurel Sullivan originated in 1984 in open court attended by public and press. The testimony remained available to the public in the court file until the December 11, 1986 stipulated sealing. Judge Breckenridge stated at that time:

> "Of course, there have been innumerable people in the interim who have come forward and examined the file. I haven't the slightest idea who all those people are, but certainly we can't go back and retract from them whatever they have seen or observed or copied."

The testimony has been public in the record on appeal since 1984.

The reporters' transcripts of proceedings were obtained by defendant throughout the month-long trial, and by its end he possessed the complete record. All the daily transcripts were loaned to Mrs. Brenda Yates whose husband owned a photocopy service. Mrs. Yates copied the entire record, made it available to the public, distributed it and advertised to sell it. Kenneth Long states in his declaration of October 8, 1987, filed in the Miller case in England:

> "Produced and shown before me now is exhibit "KDL 39" which is a true copy of several pages from a July/August 1984 publication entitled "The Journal of the Advanced Ability Center." Contained in the classified section of this publication is an advertisement from Brenda Yates offering for sale copies of the Armstrong Trial Transcripts." Exhibit K to March 15, 1990 declaration.

Mrs. Yates recalls that she sold, copied and delivered approximately twenty-five copies of the Armstrong trial transcript around that time. See declaration of Gerald Armstrong filed herewith.

Immediately following the trial Mrs. Yates also selected out of the record some one hundred fifty pages which she made into a pack and distributed. She recalls that she sold or gave away approximately one hundred copies of that pack of transcript pages.

The Armstrong trial decision, which is also often and generally called "the Breckenridge decision," and which plaintiffs seek to seal in the appellate record as pages 251-277 in Appellants' Appendix in Appeal No. B025920 and Exhibit C in Appellants' Appendix in Appeal No. B038975, has been a public document since June 20, 1984. It was affirmed by this Court on July 29, 1991.

The Breckenridge decision is forever a piece of international jurisprudence. It will continue to be used by litigants or governmental agencies as long as the undeniably litigious Scientology organization takes legal or factual positions contrary to Judge Breckenridge's findings. On the issue of unity of control, see, e.g. final adverse ruling dated July 8, 1988 issued by the Department of the Treasury to the Church of Spiritual Technology, filed herewith as Exhibit G. This ruling is now part of Church of Spiritual Technology v. US, No. 581-88T in the United States Claims Court. See item 945 at p. 70 of Plaintiffs' Exhibits to Complaint filed herewith as Exhibit H.

> "Witness testimony in the Armstrong case alleged that the project known as Mission Corporate Category Sort-Out (MCCS) had been undertaken by the Church of Scientology of California in 1980. The alleged purpose of the MCCS project was,

> according to the testimony of Laurel Sullivan, to devise a new organizational structure to conceal L. Ron Hubbard's continued control of the Church of Scientology." Final adverse ruling, p. 2.
>
> "Utilizing testimony any (sic) witnesses from the Armstrong case, the government successfully argued that Mr. Hubbard was a managing agent of the Church of Scientology of California as late as 1984. See the Founding Church [of Scientology of Washington, D.C., Inc.] v. Director, F.B.I., [et al 802 F. 2nd 1448 (1985), cert. den]." Final adverse ruling p. 4.

Plaintiffs themselves lament:

> "It is precisely the trial court's "findings" [ ] which other parties in other litigation continually have sought to invoke against the Church, either to support their own allegations or as collateral estoppel." Appellants' Opening Brief in Appeal No. B025920, n.31, p. 27.

The Breckenridge decision has been cited, discussed and quoted in countless newspaper articles and several books. See, e.g. Miller, Russell, Bare-Faced Messiah: The True Story of L. Ron Hubbard (1987) 370-372, filed herewith as Exhibit I; Corydon, Bent and Hubbard, L. Ron, Jr., L. Ron Hubbard: Messiah or Madman (1987), 238-248, filed herewith as Exhibit J; Atack, Jon, A Piece of Blue Sky: Scientology, Dianetics and L. Ron Hubbard Exposed (1990), 328-334, filed herewith as Exhibit K.

Although plaintiffs have moved to seal two copies of the Breckenridge decision in the appellate record, they have not moved to seal several other copies which have been filed in the same open record.[9] If plaintiffs intend that only the two decision copies they have designated should be sealed and the other copies left unsealed and unaffected by the sealing, then they ask this Court to order a senseless act. If they intend that the authenticity and validity of not only the unsealed copies of the Breckenridge decision in the record on appeal but the perhaps thousands of copies of the Breckenridge decision world wide be rendered questionable, and the meaning of the decision and case be confused, they ask this Court to abet a conspiracy to obstruct justice.

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[9] See, e.g. Exhibit I to plaintiffs' Petition for Writ of Supersedeas filed December 19, 1988, Exhibit A to Real Party in Interest, Bent Corydon's Response to Petition for Writ of Supersedeas filed December 23, 1988, and

When seeking to seal court records in which their antisocial nature and acts have been exposed, plaintiffs are fond of pronouncing that "[i]n the analogous area of trade secrets, it is routine for courts to seal judicial records." Motion at 9, Appellants' Opening Brief in Appeal No. B038975 n. 12 at 21. The application of the rationale of trade secrets law, however, reveals just how silly plaintiffs' effort to seal the record on appeal here is. Not only are there no trade secrets in the Breckenridge decision, or anywhere else in the appellate record, there are no non-trade secrets. The decision has been so widely distributed, is so publicly available and has been so universally used in legal and non-legal contexts that sealing it in the Armstrong appellate record would be, in the area of trade secrets, analagous to sealing in 1991 a Henry Ford patent for the internal combustion engine.

Plaintiffs also seek to have sealed pages 57 - 60 in Appellants' Appendix in Appeal No. B025920, TRO issued in the case below, August 24,

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Footnote 9 continued
Exhibit A to Defendant's Reply to Appellants' Opposition to Petition for Permission to File Response filed March 30, 1990, all in Appeal No. B038975; and Exhibit A to plaintiffs' Motion to Seal Record on Appeal now before this Court.

1982; pages 4-28 of Respondent's Brief in Appeal No. B025920; and Exhibits K, L and N in Appellants' Appendix in Appeal No. B038975, respectively Bent Corydon's Opposition to Motion to Unseal File, November 2, 1988, Plaintiffs/ Intervenor's and Cross-Defendant's Motion for Clarification and/or Reconsideration to Preserve Seal on One Document Previously Held Excluded from Evidence and Held to Be Protected by Attorney-Client Privilege, and Five Additional Documents Previously Excluded from Evidence and Maintained Under Seal, November 15, 1988, and Opposition to Motion to Reconsider, November 23, 1988.

While plaintiffs claim that the August 24, 1982 TRO has been under seal since December 1986, they themselves have used it publicly after that time. Kenneth Long stated in his affidavit of October 7, 1987, filed in the Miller case:

> "On August 24, 1982, the Honorable Judge John L. Cole of the Los Angeles County Superior Court issued a Temporary Restraining Order requiring Mr. Armstrong, his counsel, and all other persons participating or working in concert with Mr. Armstrong to surrender to the Clerk of the Los Angeles Superior Court all of the documents taken by Mr. Armstrong. There is now produced and shown to me marked as "KDL 15" a copy of the Temporary Restraining Order. As the Court will see, the terms of that Order specified that the documents surrendered to the Court would remain under seal, available only to the parties in the action and only for the purposes of that action." Exhibit F to defendant's declaration of March 15, 1990, at p. 7.

The TRO was created by plaintiff organization, it has been a public document since 1982, and it contains no conceivably private or confidential materials. The only effect of sealing it now would be confusion.

Exhibits K, L and N in Appellants' Appendix in Appeal No. B038975 have never been sealed. They comprise public documents, they were filed publicly, plaintiffs did not move to seal them in the trial court's record, and they have been public for almost three years. These materials, moreover, concern matters and documents which have been the subject of litigation between plaintiff organization and the United States Government from 1984 until the present. 10/

Respondent's Brief in Appeal No. B025920, in which plaintiffs seek to seal pages 4 to 28, has been part of the open record on appeal since January 1986. It is clear that this Court depended on these pages of the brief in its consideration of the facts and issues in the case. 11/ Plaintiffs do not ask that their briefs be sealed, even though they, like respondent's brief, cite to the trial transcript and documents admitted into evidence at trial. Sealing pages 4-28 of respondent's brief would have the effect, therefore, of leaving

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10/ See, e.g., regarding the MCCS tapes, U.S. v. Zolin, 809 F.2d 1411 (9th Cir. 1987), op. withdrawn, reh gr. en banc (9th Cir. 1987), 832 F. 2d 127, reh dismd. en banc, 842 F. 2d 1135 (9th Cir. 1988), am'd 850 F. 2d 610 (9th Cir. 1988), cert. gr. 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246, motion den. 489 U.S. 1005, 109 S.Ct. 1110, 103 L. Ed. 174 (1989) aff'd in part and vacated in part, 491 U.S. 994, 109 S. Ct. 2619, 105 L. Ed.469 (1989), on remand, 905 F. 2d 1344 (9th Cir. 1990), reh. den. en banc (unpublished order September 19, 1990); cert. denied, Church of Scientology v. U.S., ___U.S.___, 59 U.S.L.W. 3636 (March 18, 1991) Also see, regarding the "five documents," e.g., the "Order Allowing the United States of America to Examine and Copy Exhibits 5-K, 5-L, 5-O, 5-P and 6-O," filed in the Armstrong case August 27, 1991 and filed herewith as Exhibit L.

11/ See, e.g. documents shredding at Gilman Hotsprings, Resp. Bf. at 10,11; Armstrong Opinion at 919,920; defendant's November 1981 report regarding factual inaccuracies in Hubbard biographies, Resp. Bf. at 14,15; Armstrong Opinion at 920.

stand plaintiffs' statement of facts and thus confusing any reader of the record on appeal and allowing plaintiffs to restate and reinterpret the facts of the case. Although this would please plaintiffs it is unfair to defendant and the public.

Since all the materials plaintiffs want sealed are public records, sealing them would be an idle act. But even if it were found that any of the materials were not public and merited being considered private and confidential and therefore sealed, such a sealing would also be an idle act, since plaintiffs continue to attack defendant in present time concerning matters in the record on appeal, and he has a Constitutional right to defend himself, including by use of the "sealed materials."

It is well known maxim of jurisprudence that "the law neither does nor requires idle acts." California Civil Code § 3532, Stockton v. Stockton Plaza Corp. (1968) 261 Cal. App. 2d 639, 68 Cal. Rptr. 266. It is an idle act plaintiffs urge this Court to order.

IV

PLAINTIFFS HAVE SHOWN NO GROUNDS FOR SEALING THE RECORD ON APPEAL

This Court prescribed in Armstrong what was necessary for its consideration of a motion to seal. "Should plaintiffs move to seal the record on appeal, we would require a much more particularized showing," than merely "that their pursuit of an action brought primarily for the purpose of protecting their respective privacy interests in the documents converted by Armstrong should not cause disclosure of the very information they sought to protect, through references in the record to such information." Id at 923. Yet plaintiffs' motion simply repeats that argument, and the portions they seek to seal do not come close to a "much more particularized showing."

Plaintiffs also argue, exactly as they did in their appeal from Judge Geernaert's order unsealing the Armstrong court file, that "Judge Breckenridge was aware in entering the sealing order, the privacy interest of appellants was exceptionally strong." Appellants' Brief in Appeal No. B038975 at 13, Motion at 10. But this Court stated in Armstrong: "We are unaware of any showing made before Judge Breckenridge, other than the parties stipulation, justifying sealing by the trial court of the record in this case." Id. at 921. Particularized showings were made during the trial document by document, at which time Judge Breckenridge made particularized rulings, admitting some documents into evidence, allowing portions of some documents to be read into the record, and upholding plaintiffs' privacy rights in some documents and maintaining them under seal.

Plaintiffs have also not followed the Court's guidelines for parties seeking to seal appellate records as laid down in Champion v. Superior Court, supra, 201 Cal. App. 3d 787, 247 Cal. Rptr. 624.

> A request to seal a document must be filed publicly and separately from the object of the request. It must be supported by a factual declaration or affidavit explaining the particular needs of the case. Where the contents of the to-be-sealed document become a focus of the argument for sealing, the request must refer the court to the to-be-sealed document, where the court may review its contents and any content-specific declarations and arguments about sealing it." Id. at 788.

Here, plaintiffs have appended to their motion as Exhibit A the Breckenridge decision, which is one of the documents they wish to have sealed. And they have not provided this Court with "content-specific declarations and arguments about sealing" the portions of the record they have designated, but have provided only a non-specific declaration which but repeats the argument in the motion.

V

THE WAKEFIELD CASE DOES NOT SUPPORT SEALING THE RECORD IN ARMSTRONG

Contrary to plaintiffs' assertion that the case of Wakefield v. Church of Scientology of California (11th Cir. 1991) ___ F.2d ___, Slip. Op. 4625 forwards their argument for sealing the record on appeal, it undermines it. Plaintiffs claim that "[i]n that case, plaintiff Wakefield settled a case with defendant Church, and then repeatedly violated her settlement agreement by violating its confidentiality provisions." Motion at 14. In Armstrong it is plaintiff organization which has repeatedly violated the settlement agreement thereby forcing defendant to respond. Plaintiffs claim that defendant Scientology organization "brought contempt proceedings against Wakefield, and sought to have the proceedings in camera, in order to protect the very privacy rights placed at issue by Wakefield's conduct." Motion at 14. In Armstrong defendant seeks to have the court records kept unsealed and publicly available to protect himself from plaintiff organization's conduct. And where the district court was quoted in Wakefield as stating that "due to the plaintiff's complete and utter disregard of prior orders of this court, the court concludes that any restriction short of complete closure would be ineffective," in Armstrong it is plaintiff organization which has violated court sealing orders, and now nothing short of complete disclosure would be ineffective.

In this motion to seal the record on appeal plaintiffs aver that the non-disclosure conditions of the settlement agreement Wakefield had entered into with the Scientology organization were reciprocal, that what the organization sought to enjoin her from disclosing were "matters which Wakefield and the Church had agreed to keep confidential." Motion at 15. The 11th Circuit Court of Appeals apparently understood the non-disclosure conditions to be reciprocal when it stated that "[o]n September 9, 1988, the magistrate judge issued a report and recommendation which concluded that Wakefield had violated the settlement agreement, and the Church had fully complied with the agreement's terms and conditions." Id. at 4626. In a Motion to Delay or Prevent the Taking of Certain Third Party Depositions dated November 1, 1989 and filed in the case of Corydon v. Church of Scientology International, Los Angeles Superior Court No. C694401, and filed in Appeal No. B038975 as Exhibit D to defendant's declaration of March 15, 1990, defendant Scientology organization stated:

> "One of the key ingredients to completing these settlements, insisted upon by all parties involved, (emphasis in original) was strict confidentiality respecting: (1) the Scientology parishioner or staff member's experiences within the Church of Scientology; (2) any knowledge possessed by the Scientology entities concerning those staff members or parishioners; and (3) the terms and conditions of the settlement agreements themselves." 3-15-90 declaration, Ex. D. p. 4.

Yet in response to defendant's allegations in the March 15, 1990 declaration of violations of the settlement agreement by Scientology, organization attorney Lawrence Heller wrote in a declaration dated March 27, 1990 filed in the Corydon case in support of an Opposition to Motion for Order Directing

Non-Interference with Witnesses, and filed as Exhibit F to defendant's declaration of December 25, 1990 in Appeal No. B038975:

> "The confidentiality provisions of the Armstrong Settlement Agreement are nor (sic) in nature. Mr. Armstrong does have duties of confidentiality [ ] [h]owever, there are no reciprocal duties of confidentiality under the terms of the Armstrong Settlement Agreement that apply to any Church parties in the settlement."Defendant's Appendix, p89.

The Wakefield Court either did not have before it, or did not know that it had before it, such an anti-public policy punching bag agreement, so their opinion regarding violations of plaintiff Wakefield's settlement agreement is inapplicable here.

But the Wakefield opinion is applicable for its strong argument in favor of openness in our courts generally and in the Armstrong appellate record specifically, for parties such as plaintiffs herein will misstate and misuse secret agreements and secret proceedings just because they are secret.

VI

DEFENDANT'S INTEREST IN KEEPING THE RECORD ON APPEAL UNSEALED IS REAL

A sworn statement in a foreign court labeling defendant "an admitted agent provocateur of the U.S. Federal Government," 3-15-90 declaration Exhibit H, at 4, although easily viewed as hilarious, especially in light of what defendant really is, is, in this period of human history, something very calculated and sinister. The perverse use of an intelligence operation Scientology ran against defendant in 1984 in the organization's battle with the Criminal Investigation Division of the IRS in 1991 is heartbreaking. See, Exhibit A at p. 14. The perjurious declarations of plaintiffs' attorneys are frightening. See, e.g. Exhibit E, defendant's declaration of September 3, 1991 in response to attacks by various lawyers; and defendant's declaration of December 25, 1990, filed in Appeal No. B038975 as Defendant's Appendix.

That defendant has been under attack from plaintiff organization since the December 1986 settlement is unquestionable. Since filing their motion to seal the record on appeal, plaintiffs have filed a motion in Los Angeles Superior Court to Enforce the Settlement Agreement, for Liquidated Damges of $100,000 and to Enjoin Future Violations. Defendant is filing this motion herewith as Exhibit M in a sealed envelope. It is his opinion, however, that the motion contains no part, document or evidence that is not a matter of public record, and he has no objection to this exhibit being unsealed by this Court.

It is clear to defendant that plaintiffs seek to destroy his credibility, his character and his person, and that one of their weapons is the sealing of his words and hiding the record of their actions against him. Safety for honest men lies in openness; safety for the dishonest lies in secrecy. As long as defendant's words are available to the public he enjoys some safety. When all his words have been sealed there remains no deterent to plaintiffs going a step further and sealing him.

This Court has a golden opportunity in this matter to send a message to plaintiffs to cause them to abandon their hope of enlisting the assistance of the judiciary to hide their past and confuse the truth, and to place their hope for a peaceful future in openness, not secrecy.

VII

THE PUBLIC'S INTEREST IN AN OPEN APPELLATE RECORD IN THE ARMSTRONG CASE IS OVERWHELMING

Quoting from Estate of Hearst, supra, this Court delineated the public policy regarding access to court records:

> "If public court business is conducted in private, it becomes impossible to expose corruption, incompetence, inefficiency, prejudice and favoritism. For this reason traditional Anglo-American jurisprudence distrusts secrecy in judicial proceedings and favors a policy of maximum public access to proceedings and records of judicial tribunals. [ ] And the California Supreme Court has said, 'it is a first principle that the people have the right to know what is done in their courts. (In re Shortridge (1893) 99 Cal. 526, 530 [34 P. 227,228].) Absent strong countervailing reasons, the public has a legitimate interest and right of general access to court records...." Armstrong, supra, 283 Cal. Rptr. at 921, Estate of Hearst, supra, 67 Cal. App. 3d at 784, 136 Cal. Rptr. at 824.

The Armstrong case vividly demonstrates why secrecy in court files is distrusted. Taking advantage of the sealed trial court file and a secret gag agreement, plaintiff organization used matters from the court file, including sealed trial exhibits, in litigation against opponents who did not have access to the same sealed materials. They attacked defendant with his own documents while threatening him with lawsuits if he defended himself, and they perverted the meaning of matters within the sealed file. Once the file was sealed, plaintiffs fought with all their legal might litigants, such as Bent Corydon, who sought access to evidence which, in an open court file, would have been available with as little effort as filling out a file request slip and handing it to a court clerk.

Plaintiffs herein are public figures, as was L. Ron Hubbard, whom most of the documents which gave rise to the litigation and much of the evidence adduced at trial concerned. Plaintiff organization advertises broadly and forcefully, recruits actively, seeks publicity, is notorious and very wealthy. Its doctrine of "fair game" toward its perceived enemies has been recognized and denounced by several courts including this one. Plaintiffs' history, policies and actions are matters of great public interest, and public policy therefore requires that the record on appeal, which deals with these history, policies and actions be kept unsealed and complete.

Plaintiffs do not seek to seal the record on appeal to vindicate privacy rights. As Judge Breckenridge stated in his famous decision: "The Guardian's Office, which plaintiff (Mrs. Hubbard) headed, was no respector of anyone's civil rights, particularly that of privacy." Decision at p. 12. Although plaintiff organization has renamed the Guardian's Office's and changed its head it has not altered its nature. It is plaintiffs' hope to conceal the facts, confuse the issues, pervert the truth, and deny the public the information it needs and has a Constitutional right to for making rational choices.

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VIII

CONCLUSION

Plaintiffs have made no showing that would justify sealing the record on appeal, whereas plaintiffs' unclean hands, public policy, defendant's interests and the fact that all the to-be-sealed documents have been for years in the public domain overwhelmingly warrant keeping the record open.

Dated: October 14, 1991

Respectfully submitted,

Gerald Armstrong
In Pro Per

SERVICE LIST
(Opposition to Motion to Seal Record on Appeal)

ERIC M. LIEBERMAN, ESQ.
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.
740 Broadway - Fifth Floor
New York, New York 10003-9518

MICHAEL LEE HERTZBERG, ESQ.
740 Broadway - Fifth Floor
New York, New York 10003-9518

BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Hollywood, California 90029

TOBY L. PLEVIN, ESQ.
10700 Santa Monica Blvd.
Suite 4-300
Westwood, CA 90025

CLERK OF THE SUPERIOR COURT
County of Los Angeles
111 North Hill Street
Room 204
Los Angeles, CA 90012

PROOF OF SERVICE BY MAIL

I am a resident of the County of Marin, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 711 Sir Francis Drake Blvd, San Anselmo, California 94960.

On October 15, 1991 I caused to be served the within OPPOSITION TO MOTION TO SEAL RECORD ON APPEAL on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at San Anselmo, California, addressed to the persons and addresses specified on the service list attached.

Executed on October 15, 1991 at San Anselmo, California.

I declare that the foregoing is true and correct.

L. Phippeny

L. Phippeny

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff-Appellant,

and

MARY SUE HUBBARD,

Intervenor-Appellant,

v.

GERALD ARMSTRONG,

Defendant-Respondent

Case Nos. B025920 & B038975

L.A. Superior Ct. No.C420153

EXHIBITS SUPPORTING OPPOSITION TO MOTION TO SEAL RECORD ON APPEAL

Gerald Armstrong
P.O. Box 751
San Anselmo, CA 94960
(415)456-8450

DECLARATION OF GERALD ARMSTRONG

I, Gerald Armstrong, declare:

1. I am the defendant in the case of Church of Scientology and Mary Sue Hubbard vs. Gerald Armstrong, Los Angeles Superior Case No. C420153. I am familiar with the records in this case and related cases or publications.

2. Attached hereto are true and correct copies of the following documents:

Exhibit A	Complaint filed August 12, 1991 in the case of Church of Scientology International vs. C. Phillip Xanthos and 16 Other Agents, No. 91-4302 SVW, in U.S. District Court in the Central District of California.
Exhibit B	Further Response to Order of July 2, 1985; Request for Stay dated January 22, 1986, and filed in Armstrong..
Exhibit C	Supplemental Memorandum in Support of Defendants's Motion to Dismiss Complaint with Prejudice; Declarations of Sam Brown, Thorn Smith, Edward Austin, Lynn R. Farny and Laurie J Bartilson, filed August 26, 1991 in the case of Vicki and Richard Aznaran vs. Church of Scientology of California, et al..No. CV 88-1786 JMI in U.S. District Court for the Central District of California.
Exhibit D	Reply in Support of Defendants' Motion for Summary Judgment Based on the Statute of Limitations, filed August 26, 1991 in Aznaran.
Exhibit E	Declaration of Gerald Armstrong Regarding Alleged "Taint" of Joseph A Yanny, Esquire, filed September 4, 1991 in Aznaran.
Exhibit F	Defendants' Opposition to Ex Parte Application to File Plaintiffs' Opposition to Defendant's Motion to Dismiss Complaint with

	Prejudice; Declaration of Laurie J. Bartilson, filed August 30, 1991 in Aznaran.
Exhibit G	Final Adverse Ruling dated July 8, 1988 from the Internal Revenue Service to the Church of Spiritual Technology.
Ehibit H	Page 70 of Plaintiff's Exhibits to Complaint filed October 6, 1988 in the case of Church of Spiritual Technology vs. United States of America, No. 581-88T in the U.S. Claims Court.
Exhibit I	Pages 370 - 372 from Miller, Russell, Bare-Faced Messiah: The True Story of L. Ron Hubbard.
Exhibit J	Pages 238 - 249 from Corydon, Bent and Hubbard, L. Ron, Jr., L. Ron Hubbard: Messiah or Madman?
Exhibit K	Pages 328 - 334 from Atack, Jon, A Piece of Blue Sky: Scientology, Dianetics and L. Ron Hubbard Exposed.
Exhibit L	Order Allowing the United States of America to Examine and Copy Exhibits 5-K, 5-L, 5-O, 5-P and 6.0 dated August 27, 1991 and filed in Armstrong.
Exhibit M	(In a sealed envelope) Notice of Motion and Motion to Enforce Settlement Agreement; for Liquidated Damages and to Enjoin Future Violations filed October 3, 1991 in Armstrong.

3. During the 1984 Los Angeles Superior Court trial in Armstrong I became acquainted with Mrs. Brenda Yates who attended many of the daily proceedings. Mrs. Yates, whose husband owned a copy service in Los Angeles at that time, offered to make copies of the reporters' transcripts of proceedings, which were being obtained daily by my attorney, Michael J. Flynn. By the end of the trial I learned that Mrs. Yates possessed a complete set of the trial transcripts. At the end of the trial I also provided Mrs. Yates for copying a complete set of the trial exhibits which I had in my possession.

This did not include any exhibits from the sealed documents which had been the subject of the trial, as these were segregated and sequestered by Judge Paul G. Breckenridge, Jr., who presided at the trial, and not copied by my attorneys or made available to the public.

4. Since the trial I have communicated with Mrs. Yates from time time right up to a few days ago when I talked with her regarding her distribution of the trial transcripts, Judge Breckenridge's June 20, 1984 Memorandum of Intended Decision and the trial exhibits. Mrs. Yates recalls that she sold and distributed approximately twenty-five copies of the complete trial transcript within the year following the trial. She recalls distributing about eight copies of the trial exhibits. She does not recall how many copies of the Breckenridge decision she distributed but felt that it was all over the world.

5. Mrs. Yates also said that she selected out of the complete transcript various parts of the trial testimony totalling about one hundred fifty pages, which she formed into a pack which she also copied, sold and distributed. She recalls that she distributed approximately one hundred of this pack.

Under penalty of perjury pursuant to the laws of the State of California I hereby declare that the foregoing is true and correct according to my first-hand knowledge, except those matters stated to be on information and belief, and as to those matters, I believe them to be true.

Executed on October 16, 1991, at San Anselmo, California.

G.

Gerald Armstrong

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John J. Quinn
Eric L. Dobberteen
QUINN, KULLY AND MORROW
520 South Grand Avenue, 8th Floor
Los Angeles, CA 90071
(213) 622-0300

William T. Drescher
23679 Calabasas Road, Suite 338
Calabasas, CA 91302
(818) 591-0039

Earle C. Cooley
COOLEY, MANION, MOORE & JONES, P.C.
21 Custom House Street
Boston, MA 02110
(617) 542-3700

Kendrick L. Moxon
BOWLES & MOXON
6255 Sunset Boulevard,
Suite 2000
Hollywood, CA 90028
(213) 661-4030

James H. Berry, Jr.
BERRY & CAHALAN
2049 Century Park East
Suite 2750
Los Angeles, CA 90067
(213) 284-2183

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FILED
CLERK, U.S. DISTRICT COURT
AUG 12 1991
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CHURCH OF SCIENTOLOGY INTERNATIONAL, Plaintiff, vs. C. PHILLIP XANTHOS; ALAN LIPKIN; MARCUS OWENS; MARVIN FRIEDLANDER; S. ALLEN WINBORNE; ROBERT BRAUER; JOSEPH TEDESCO; CHARLES RUMPH; RAYMOND JUCKSCH; MELVYN YOUNG; CARL CORSI; GREGORY ROTH; WILLIAM CONNETT; KEITH ALAN KUHN; CHARLES JEGLIKOWSKI; MELVIN BLOUGH; RODERICK DARLING; and DOES 1 - 200, Defendants.	91 4301 SVW (Tx) No. COMPLAINT FOR DAMAGES FOR AND INJUNCTIVE RELIEF FROM: 1. FOURTH AMENDMENT VIOLATIONS; 2. FIRST AMENDMENT VIOLATIONS; 3. DUE PROCESS VIOLATIONS UNDER THE FIFTH AMENDMENT; AND 4. EQUAL PROTECTION VIOLATIONS UNDER THE FIFTH AMENDMENT JURY TRIAL DEMANDED

(1)

JURISDICTION AND VENUE

1. As this action seeks damages for violations of the United States Constitution brought under the authority of Bivens v. Six Unknown Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) in that jurisdiction is not founded solely on diversity of citizenship and the claims arose in this judicial district. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) in that this is a civil action in which all the defendants are or were employees of a United States agency, some of whom are residents of this judicial district, which is the judicial district in which plaintiff resides and in which the causes of action set forth arose.

PARTIES

3. Plaintiff Church of Scientology International ("the Church") is a not for profit religious corporation organized and existing under the laws of the State of California, with its principal place of business in Los Angeles, California. In accordance with the ecclesiastical policies of the Scientology religion, plaintiff is the Mother Church of the Scientology religion, an internationally recognized religion engaged solely in spiritual, charitable, humanitarian and community-oriented endeavors intended to enhance adherents' spiritual knowledge of themselves and their Creator. The Scientology religion has more than 8 million members and Scientology Churches, Missions and groups exist in 90 nations around the world.

4. Except for three who have retired from government service since performing the acts hereinafter averred, the defendants are, and at all relevant times were, employees of the Internal Revenue Service ("IRS"). The matters averred in this Complaint are largely drawn from information only recently discovered by the Church in the course of Freedom of Information Act ("FOIA") litigation.

5. As the conduct which gives rise to the Church's claims of constitutional violations occurred within different divisions and offices of the IRS, the defendants are grouped within their respective divisions for the purposes of the following identifying averments:

A. Los Angeles Criminal Investigation Division.

i. Defendant Philip Xanthos ("Xanthos") is, and at all relevant times was, a Branch Chief of the Los Angeles Criminal Investigation Division of the IRS ("LA CID"). Upon information and belief, Xanthos resides in this judicial district.

ii. Defendant Alan Lipkin ("Lipkin") is, and at all relevant times was, a Group Manager within LA CID. Upon information and belief, Lipkin resides in this judicial district.

B. National Office Exempt Organizations.

i. Defendant Marcus Owens ("Owens") is currently the Director of the IRS National Office Exempt Organizations ("EO") Technical Division, and was, at all relevant times an official of the EO Technical Division. Upon information and belief, Owens resides in the State of Maryland.

ii. Defendant Marvin Friedlander ("Friedlander") is, and at all relevant times was, an IRS Senior Conferee Reviewer in the EO Technical Division. Upon information and belief, Friedlander resides in the State of Maryland.

iii. Defendant S. Allen Winborne ("Winborne") was at all relevant times until approximately 1987 IRS Assistant Commissioner for Employee Plans and Exempt Organizations. Upon information and belief, Winborne resides in the State of Maryland.

iv. Defendant Robert Brauer ("Brauer") was at all relevant times from approximately 1987 to and including approximately December, 1990, IRS Assistant Commissioner for Employee Plans and Exempt Organizations. Since in or about January, 1991, Brauer has been the IRS District Director in Pittsburgh, Pennsylvania. Upon information and belief, Brauer resides in the Commonwealth of Pennsylvania.

v. Defendant Joseph Tedesco ("Tedesco") was at all relevant times until approximately 1987, Chief of the National Office Exempt Organizations Technical Division. Since in or about 1987, Tedesco has been in retirement. Upon information and belief, Tedesco resides in the Commonwealth of Virginia.

vi. Defendant Charles Rumph ("Rumph") was at all relevant times until approximately 1986, an attorney in the Tax Litigation Division, Office of Chief Counsel at the National Office. Although he did not work in EO, plaintiff is informed and believes that Rumph worked in conjunction with the other EO defendants in doing the acts hereinafter averred. Since in or about 1986, Rumph has been in retirement. Upon information and belief, Rumph resides in the District of Columbia.

vii. Defendant Roderick Darling ("Darling") is, and at all relevant times was, an IRS tax law specialist in the EO Technical Division. Upon information and belief, Darling resides in the State of Maryland.

C. Los Angeles Exempt Organizations Division.

i. Defendant Raymond Jucksch ("Jucksch") is, and at all relevant times was, a Group Manager within the Los Angeles Exempt Organizations Division of the IRS ("LA EO"). Upon information and belief, Jucksch resides in this judicial district.

ii. Defendant Melvyn Young ("Young") is, and at all relevant times was, a Revenue Agent within LA EO. Upon information and belief, Young resides in this judicial district.

iii. Defendant Carl Corsi ("Corsi") was at all relevant times to and including

July, 1989, a Revenue Agent within LA EO. Since in or about July, 1989, Corsi has been in retirement. Upon information and belief, Corsi resides in this judicial district.

D. Los Angeles District Counsel Office.

i. Defendant Charles Jeglikowski ("Jeglikowski") is, and at all relevant times was, an attorney within the IRS District Counsel's office located in Thousand Oaks, California. Upon information and belief, Jeglikowski resides in this judicial district.

ii. Defendant Gregory Roth ("Roth") is, and at all relevant times was, an attorney within the IRS District Counsel's office located in Thousand Oaks, California. Upon information and belief, Roth resides in this judicial district.

E. Los Angeles District Office.

i. Defendant William Connett ("Connett") was at all relevant times to and including January, 1986, District Director of the Los Angeles District Office of the IRS. Since in or about 1987, Connett has been the IRS Representative in Paris, France, where, on information and belief, he now resides.

F. IRS National Office Internal Security Division.

i. Defendant Keith Alan Kuhn ("Kuhn") is, and at all relevant times was, Chief of the

Investigations Branch of the Internal Security Division of the Office of the Chief Inspector of the IRS. Upon information and belief, Kuhn resides either in the State of Maryland or the Commonwealth of Virginia.

G. St. Petersburg, Florida Exempt Organizations Division.

i. Defendant Melvin Blough ("Blough") is, and at all relevant times was, a Revenue Agent within the Exempt Organizations Division of the St. Petersburg, Florida office of the IRS. Upon information and belief, Blough resides in the state of Florida.

6. Upon information and belief, IRS employees other than those named as defendants in this action performed acts which are unlawful and unconstitutional in connection with the facts set forth in this complaint. The Church will seek leave of Court to amend this complaint when the IRS employees not named as defendants, but whose conduct warrants their inclusion as defendants in this action, are identified.

NATURE OF PLAINTIFF'S CLAIMS

7. By this action, the Church seeks damages for violations of its First, Fourth, and Fifth Amendment rights arising from the conduct of the defendants and others within the Internal Revenue Service. While this action focuses on recent events, it is the culmination of three decades of IRS coercion in violation of the Free Exercise Clause of the First Amendment, discriminatory treatment in violation of the

Establishment Clause of the First Amendment and the Equal Protection component of Due Process under the Fifth Amendment, as well as the denial of procedural Due Process rights in violation of the Fifth Amendment, and actions in violation of the Church's Fourth Amendment rights.

8. Although the IRS has withheld the vast majority of documents requested by Churches of Scientology under the FOIA, the limited FOIA information recently discovered by the Church through the production of documents and testimony demonstrates the actionable conduct hereinafter averred. This action, moreover, does not arise in a vacuum. It is an outgrowth of IRS conduct that includes:

a. Efforts by the IRS' Chief Counsel's office to persuade at least one municipal authority to find "local statutes and ordinances available as tools to curtail or close down" Scientology Churches;

b. Employment of "plants" to infiltrate Scientology Churches to obtain copies of Church records;

c. Recommendations of the IRS Chief Counsel that "defining church in regulations is one method to attack Scientology," which recommendation was followed by the formulation of such a definition in General Counsel Memorandum 36078 entitled "Church of Scientology" (later promulgated as Revenue Ruling 76-415);

d. Targeting the Church of Scientology as "subversive," and conducting non-tax-related surveillance and intelligence gathering that a United States Senate Subcommittee would later find was "used to stigmatize, to set a group of individuals and organizations apart as somehow inherently suspect . . ." and which a Senate Select Committee found to be "an effort to employ tax weapons for essentially nontax purposes";

e. IRS documents which refer to the Scientology religion as "religious bunco" and a "grab-bag of philosophical voodooism," as well as IRS tape recordings of witness interviews in which defendants Young, Corsi and Roth referred to Scientologists as "crazy devotees," characterized Scientology's religious services as a "dog and pony show," compared adherence to the Scientology faith to drug addiction, and called the religion itself a "facade"; and

f. Encouragement given by Corsi, Young and Roth to individuals pursuing civil cases involving claims for damages against plaintiff and other Scientology Churches.

9. The claims for relief asserted in this action arise from the demise of a two-year criminal investigation of plaintiff, other Scientology Churches, and individual Scientologists that produced no indictments, no charges, and nothing more than the refusal of the Department of Justice to take any action with regard to that lengthy investigation. In the aftermath of that investigatory debacle, defendants, as is

more fully averred later in this complaint, embarked upon a course of conduct which has included:

a. EO employees demanding documents from plaintiff and other Scientology Churches ostensibly to evaluate applications for exemption under 26 U.S.C. § 501(c)(3), while in reality making such demands so that those documents could be turned over to IRS criminal investigators in violation of the Fourth Amendment;

b. Inauguration of nationally and locally coordinated campaigns to single out plaintiff and other Churches of Scientology as targets for tax inquiries because they were Churches of Scientology, and to use such inquiries as a means to generate otherwise unavailable tax liabilities such as under the Federal Insurance Contribution Act and the Federal Unemployment Tax Act in violation of the Establishment and Free Exercise Clauses of the First Amendment and the Equal Protection component of the Due Process Clause of the Fifth Amendment; and

c. Embarking on a nationally and locally coordinated campaign of collections activity which arbitrarily and capriciously freezes and attempts to freeze bank accounts of plaintiff and other Scientology Churches for alleged tax obligation of still other Scientology Churches without notice and without any opportunity to be heard before seizing plaintiff's property in violation of the Due Process Clause of the Fifth Amendment.

FIRST CLAIM FOR RELIEF

(For First, Fourth and Fifth Amendment Violations by
Defendants Xanthos, Lipkin, Owens, Friedlander,
Darling, Winborne, Tedesco, Rumph, Jucksch)

10. The Church repeats and realleges each and every averment set forth in paragraphs 1 through 9, inclusive.

11. The Scientology religion has been in existence for nearly four decades. From its earliest days, it has been a target of IRS scrutiny and hostility. After years of controversy and litigation, the IRS agreed with various Churches of Scientology to conduct an examination of a representative church and issue an exemption ruling based upon that examination for the representative church and all others similarly situated.

12. The IRS, for 25 consecutive days in March and April 1975, conducted an exhaustive examination of the Church of Scientology of Hawaii ("the Hawaii Church"), addressing every aspect of that church's operations, including Scientology beliefs and practices. As a result of that examination, Church of Scientology of Hawaii and twelve other Scientology churches were granted exemptions under 26 U.S.C. § 501(c)(3).

13. The grant of exemption to the Hawaii Church followed an unsuccessful attempt by the IRS to employ a litigation tactic appropriately described as "harass and moot" to avoid judicial adjudication of the exemption issue. When the Hawaii Church

filed suit contesting the IRS' 1969 denial of exemption, the IRS tendered a refund of the taxes to avoid an unfavorable court decision. When the Church refused the refund and pressed for a judicial determination, the IRS moved to dismiss claiming that the issue had been rendered moot. After the Ninth Circuit rejected this litigation ploy, the IRS settled the case and later granted exemption. The IRS, however, continued to resist applications for exemption by Scientology churches despite the fact that its only thorough, comprehensive examination of any church had resulted, begrudgingly, in more than a dozen exemptions.

14. Exemption applications for plaintiff Church of Scientology International, Church of Spiritual Technology and Religion Technology Center were filed with the Internal Revenue Service in 1983. These exemption applications were forwarded to the IRS National Office by the local offices where they were filed. Responsibility for the exemption applications resided with defendants Owens, Friedlander, and Tedesco of the National Office EO working in conjunction with defendant Rumph of the Office of the Chief Counsel. EO requested additional information of the filing entities. Discussions between Church counsel and the IRS personnel processing the applications began with regard to the IRS' requests for additional information, and at the request of those defendants the applicants provided further information to the IRS based on the belief that the newly formed churches all qualified for exemption and that the IRS was acting in good faith in the negotiations. EO letter requests to plaintiff and the other applicants dated July 30

and October 5, 1984 and January 18 and April 22, 1985 requested the applicants comment on specific allegations made by LA CID informants that were at the heart of the ongoing CID investigation. FOIA records and discovery in FOIA litigation reveal a continuous flow of information from EO to LA CID.

15. It is now clear, however, that defendants and the IRS were not dealing in good faith, but rather, were merely asking for and receiving voluminous financial and other records from plaintiff and the other churches without any intention of ever granting any section 501(c)(3) exemptions and as an unlawful means of obtaining data for LA CID. The use of the exemption process to obtain information for a criminal investigation deprived plaintiff of its rights guaranteed by the First, Fourth and Fifth Amendments to the United States Constitution, and violated specific IRS rules designed to protect those rights. The Internal Revenue Manual contains specific provisions which require EO to "immediately suspend" an inquiry if EO learns that "an assigned case involves a taxpayer who is the subject of a criminal investigation." The EO agents responsible for plaintiff's exemption application did not suspend the civil proceeding, but instead continued to use it as a means for gathering information for CID.

16. Between 1984 and 1986, LA CID conducted an extensive criminal investigation of plaintiff, other Scientology churches, and individual Scientologists, under the auspices of defendant Connett, the then-District Director, defendant Xanthos, the LA CID Branch Chief and defendant Lipkin, the assigned LA CID Group Manager. That investigation included the

use of mail covers, paid informants, summonses to dozens of financial institutions and church members, and infiltration of Scientology's ecclesiastical hierarchy. The infiltration of the Church was planned as an undercover operation by the LA CID along with former Church member Gerald Armstrong, who planned to seed church files with forged documents which the IRS could then seize in a raid. The CID actually planned to assist Armstrong in taking over the Church of Scientology hierarchy which would then turn over all Church documents to the IRS for their investigation. The CID further coordinated this plan with the Ontario Provincial Police in Canada, through direct contacts and exchange of information, hoping that through simultaneous assaults the "momentum of . . . charges will cause [Scientology] to collapse." Thus, the documents being channelled from EO to CID were being used for the unlawful purpose of forwarding criminal investigations in both the United States and in Canada.

17. That criminal investigation, the results of which were ultimately rejected in full by the Department of Justice, was doomed from its inception because it was based upon a faulty premise -- that plaintiff and the other Churches were engaging in criminal conduct (conspiracy to interfere with the collection of taxes) by the mere fact that they had applied for section 501(c)(3) exemptions. In other words, at the time that EO was allegedly processing the exemption applications, the IRS had already made a determination that the exemption applications were criminal instruments because the applying churches had already been prejudged as non-exempt.

18. The IRS personnel charged with responsibility for the exemption applications -- defendant Friedlander, and his superiors Owens, Tedesco and Winborne -- were fully aware of the ongoing criminal investigation, yet despite the fact that the Fourth and Fifth Amendment and IRS written procedures mandate that all civil IRS proceedings concerning a given tax period be suspended during the time in which a criminal investigation of that same period is in progress, EO personnel continued to request and receive information and documents from plaintiff and the other Churches and delivered such information and documents to defendants Xanthos, Lipkin and the other LA CID personnel conducting the criminal investigation.

19. In late July 1984, the Church learned through the media that LA CID had initiated a criminal investigation relating to Scientology organizations and individuals. Leaks to the media regarding the CID investigation had already resulted in unfavorable and harmful media reports, prior to the time when the organizations and individuals became aware that they were under investigation. In response to one such article, Church counsel contacted defendant Connett who confirmed that an investigation of Scientology's founder, L. Ron Hubbard, and another Scientologist was in progress, but who expressly misrepresented to counsel that the criminal investigation was separate and distinct from the ongoing exemption application process, and encouraged the Church to continue the application process. Connett, with the assent of defendants Friedlander and Winborne, told the Church's attorneys that the CID investigation did not directly involve

any of the applicants and might not lead to charges being filed. He stated that in that case, it would not make sense to drop the existing team which was developing the exemption applications. The truth of the matter was that defendants Friedlander and Tedesco were turning material over to LA CID, either directly, through Connett, or through the Los Angeles Exempt Organizations Division (which was staffed by defendants Jucksch, Corsi, and Young).

20. Connett did not merely misrepresent the status of the CID investigation to the Church. He also set into motion the coordination between the National Office employees processing the exemption applications, and the agents of the CID. In January 1985, Friedlander contacted Xanthos and his superior, CID Chief Ronald Saranow, at the suggestion of defendant Connett for the purpose of obtaining information from CID's files. Friedlander informed defendant Tedesco of his plan to travel to Los Angeles along with defendant Rumph, for the purpose of reviewing CID's materials as well as CID's "draft prosecution letter." In order to prevent plaintiff and the other churches from learning of the CID investigation, Friedlander proposed that EO and CID could mutually coordinate when or if any CID material would be included in any applicant's administrative file to preclude premature disclosure. Tedesco approved of the trip, as did defendant Winborne, who stated they should leave when ready.

21. In approximately February 1985, during the course of EO's information gathering on behalf of LA CID, defendants Friedlander and Rumph traveled to Los Angeles and met with

defendant Lipkin to acquire information about the criminal investigation and to learn of the criminal investigators' areas of interest so that EO and LA CID might work together more efficiently. At that time, Friedlander was provided with a draft copy of a "Special Agent's Report" ("SAR") prepared by the LA CID defendants, Xanthos and Lipkin, requesting prosecution of various Scientology Churches, entities, members and their counsel, and setting forth the theories of prosecution. Friedlander thereafter sought information from plaintiff and the other applicants relating to areas addressed in the draft SAR, representing that the information was necessary for EO's evaluations of the pending exemption applications. The information requested by Friedlander was supplied to EO, and thereafter forwarded by EO to LA CID to assist in the criminal investigation. Friedlander kept defendants Owens, Tedesco and Winborne informed regarding the provision of information by EO to LA CID. Moreover, Friedlander, knowing that he should have suspended the EO examination in light of the pending CID investigation, consulted agents of LA CID as well as Tedesco, Winborne and others concerning the requirement of suspending the EO proceeding. Friedlander was specifically directed to continue the exemption process, and he did so.

22. Following Friedlander's return from viewing CID's files in Los Angeles, EO employee Roderick Darling communicated with Friedlander regarding the use of the CID materials. Darling suggested that EO could pose questions to the Church based on certain documents in CID's files, since it would not involve reliance on any testimony solicited by CID and,

therefore, would not expose the IRS to the charge that the IRS EO function had allied itself with CID or was tainted by CID's conspiracy theories. Darling also informed Friedlander that CID hoped that EO would somehow be able to extract information from the Church, and that EO would be able to turn up something which CID had not been able to. In March 1985, defendants Lipkin and Connett attended a meeting at the National Office to discuss the pending exemption applications with defendants Friedlander, Winborne, Rumph and Tedesco. They discussed the possible timing of denials of exemption to coincide with the CID's prosecution. Connett also assured the EO defendants that CID would provide them with the Special Agent's Report when it was completed.

23. Numerous instances of the provision of information from defendants responsible for EO functions to defendants responsible for LA CID functions are presently known to plaintiff through FOIA requests, FOIA litigation and discovery in such actions, and numerous other instances of such unlawful acts are believed to exist but have not yet been discovered by plaintiff. The IRS has even attempted to thwart such Freedom of Information Act discoveries by improperly withholding documents and portions thereof concerning the unlawful collusion between EO and CID which should have been released. The IRS has improperly asserted that records revealing the collusion were not discloseable based on the IRS' "deliberative process privilege," and thereby seeking to keep its unlawful acts from coming to view.

24. To prevent the revelation of the unlawful and

unconstitutional collusion between EO and LA CID, Friedlander destroyed copies of memoranda and notes taken during his visits to LA CID, and on information and belief, notes of subsequent telephone communications with Lipkin and others. Friedlander also destroyed documents he requested from LA CID because he did not want to place them in the application files and thereby be required to supply them to the applicant churches. Darling also supplied documents obtained during EO's examination to LA CID for its use in its criminal investigation and received a copy of the draft SAR.

25. The initial conduit for transmitting information and documents from the Church through the EO in Washington, D.C. (defendants Owens, Tedesco, Rumph, Darling and Friedlander) to LA CID (defendants Xanthos and Lipkin, under the supervision of defendant Connett) was the Los Angeles Exempt Organizations Division (defendants Jucksch, Corsi and Young). At some time during the concurrent EO examination and LA CID criminal investigation, defendant Connett agreed to assume personal responsibility for transmitting the material from EO to LA CID.

26. Plaintiff and the other applicant Churches were unaware that EO and LA CID were colluding with one another behind the scenes, and continued to cooperate with EO personnel in conducting the examinations which the IRS represented were being conducted in good faith. Any potential suspicions by plaintiff or the other Churches that the information gathering may not have been completely for civil purposes, were allayed by the receipt of a letter to CST dated July 26, 1985, written by Friedlander and Darling, in which they stated: "We assure you

that our questions (in previous correspondence) have heretofore been solely directed at developing the applications to the point where your purpose and activities have been sufficiently described in accordance with the standards for issuing rulings ...." These representations were fraudulent, as the SAR, written 2 months earlier, unequivocally called for denial of tax exemption.

27. Notwithstanding that representation, EO continued to gather information for use by LA CID. A copy of the SAR obtained in FOIA litigation makes it clear that the purpose of the defendants who participated in the EO - LA CID collusion was for defendants to combine their efforts to create "another round of denial of exempt status," a circumstance which the SAR states was intended to cause "a final halt to" and "the ultimate disintegration of" the Scientology religion.

28. In September of 1985, plaintiff and the other applicants learned that LA CID had forwarded a recommendation for criminal prosecution to the IRS LA District Counsel's office, and that at least RTC and CST were named as targets of the investigation. On information and belief, plaintiff was also a target of the criminal investigation. By December 1985, the District Counsel's office had concluded that the SAR did not warrant immediate prosecution and forwarded the matter to the Justice Department with a request that an investigative grand jury be convened.

29. The request for a grand jury coincided with the January 7, 1986 issuance of letters by the IRS National Office proposing the denial of exempt status to plaintiff, RTC and

CST. Defendant Friedlander made the decision to issue those letters at that time. At the same time, January of 1986, defendants Jucksch, Corsi and Young, on behalf of the IRS' LA Exempt Organizations Division, prepared to launch a third prong of attack (to coincide with the grand jury request and the proposed exempt status denials) in the form of examinations conducted by LA EO. Those examinations were an outgrowth of the stalled LA CID investigation, and LA EO defendant Corsi had held a series of meetings during the course of the criminal investigation with LA CID defendant Xanthos.

30. The three prongs of attack which defendants had coordinated to begin in January 1986 were all delayed, first, because the Justice Department did not convene a grand jury and, second, because plaintiff, RTC and CST submitted an approximately 500-page protest of the proposed exemption denials.

31. By October 1986, LA CID's criminal investigation of the various Scientology Churches and individuals was moribund, and since the Justice Department had refused to pursue the matter before a grand jury, the case was about to be officially closed. By that time, the protests to the proposed denial of exempt status had bogged down the efforts of the EO defendants. In October 1986, with the investigation about to close, agents of LA CID attempted to utilize the news media to revive the investigation. The October 1986 issue of "Forbes" magazine contained an article by writer Richard Behar which falsely stated that the CID investigation was "gathering momentum." On information and belief, these and other

allegations which appeared in the Forbes article were "leaked" to Behar by defendants Lipkin with the knowledge and consent of defendant Xanthos to encourage the Department of Justice to more seriously consider the allegations set forth in the Special Agents Report. Indeed, Behar openly applauded the SAR's stated goal - the "ultimate disintegration" of the Church - in a recent Time magazine article. Defendant Owens, in turn, was quoted by Behar in the recent article, stating that there have been thousands of IRS agents involved in Church related tax matters for years. The IRS also apparently provided Behar with information concerning the Church's FOIA cases, as Behar was able to report on the number of such matters filed. Thus, the IRS' pattern of utilizing media to flank its actions against the Church continues to the present.

32. In November 1986, the Department of Justice rejected the request made by LA CID through LA District Counsel to convene a grand jury to continue the criminal investigation. The LA CID defendants, however, remained undaunted, and further sought to exploit their collusive connection to the EO and the LA EO defendants. In that regard:

a. On or before December 16, 1986, defendant Lipkin of LA CID met with defendant Corsi of LA EO to arrange for a meeting between Lipkin and Corsi's Group Manager, defendant Jucksch. At that December meeting, Lipkin discussed the LA CID files on the Church with Corsi and explained that defendant Friedlander of National Office EO had reviewed those files;

b. Defendants Lipkin, Corsi, and Jucksch met on January 5, 1987 to coordinate further actions with respect to plaintiff and other Scientology Churches;

c. In conjunction with National Office EO, LA CID and LA EO planned, coordinated, and implemented a plan to audit fourteen Churches of Scientology and two related trusts, all already exempt; and

d. LA District employees were invited to the National Office to review the data submitted by plaintiff, CST and RTC during the exemption application process.

Plaintiff and the other applicants, unaware of the ongoing collusion among the EO, LA EO, and LA CID defendants, continued to negotiate with EO to attain rulings of exempt status under 26 U.S.C. § 501(c)(3). Those negotiations continued throughout 1987.

33. As a result of the conduct of the defendants, and each of them, plaintiff has been coerced into diverting resources and attention away from the pursuit of its religious beliefs in order to defend itself against defendants' actions. Plaintiff also has been burdened in the free exercise of its religious beliefs by the intrusion of defendants into its records practices, beliefs and ecclesiastical structure and policies by the defendants as is hereinabove averred. Such coercion and burden each constitutes a violation of the Free Exercise Clause of the First Amendment to the United States

Constitution.

34. The collusion between the EO defendants, the LA EO defendants, and the LA CID defendants by which plaintiff was misled to believe that documents sought by defendants were for the purpose of a good faith exemption examination (rather than a sham exemption examination) when in fact such documents were being funnelled directly to criminal investigators, constitutes a violation of the Fourth Amendment to the United States Constitution.

35. The defendants, and each of them, by their conduct alleged herein, have singled out plaintiff for invidious discrimination in the application of the laws of the United States on the basis of plaintiff's religious affiliation, in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

36. The conduct of the defendants, and each of them, has been arbitrary and capricious, and has resulted in the deprivation of plaintiff's property. Such conduct, motivated by religiously rooted bias and prejudice, is a violation of the Due Process Clause of the Fifth Amendment to the United States Constitution.

37. Plaintiff has been damaged and continues to be damaged thereby in an amount to be proven at trial. That amount is not presently capable of precise calculation but is believed to be in excess of $20,792,850 which represents direct expenditures by plaintiff. Plaintiff has also suffered consequential and resulting damages in an amount to be proven at trial, but which is in an amount in excess of $100 million.

SECOND CLAIM FOR RELIEF

(For First and Fifth Amendment Violations by All Defendants)

38. The Church repeats and realleges each and every averment set forth in paragraphs 1 through 35, inclusive.

39. On or about December 4, 1987, defendant Friedlander informed Church representatives that the IRS insisted upon a "limited" review of the financial records of plaintiff RTC, and CST for 1986, to be conducted by the Los Angeles District Office, for the purpose of verifying the integrity of their records and to rule out the existence of any private inurement, the only remaining potentially disqualifying factor. In early 1988, defendants Friedlander and Brauer assured plaintiff of favorable exemption determinations as long as the limited review did not uncover inurement or an inadequate accounting system.

40. Those representations were false. Documents released by the IRS in later FOIA litigation included drafts of final denial letters for plaintiff, RTC and CST written by Friedlander and Darling in January of 1988, at the very time when defendants Brauer and Friedlander were representing to Church counsel that exemption was imminent. In fact, the representations were no more than a ploy to entice plaintiff and the other Scientology Churches to continue turning over detailed information to the IRS in violation of the Church's civil and constitutional rights.

41. On March 17, 1988, the National Office provided plaintiff, RTC and CST with new letters of assurance stating that the IRS was prepared to conduct a review so that "we may

complete favorable consideration" of the exemption applications. The letters further stated that the purpose of the review was to "determine the integrity of your financial and accounting systems" and "verify that no part of your net earnings inures to the benefit of any private shareholder or individual and that there is no other disqualifying activity." Each Church executed its letter of assurance, permitting the extremely unusual process of an on-site document review of plaintiff's records to proceed.

42. Extensive, on-site reviews began, starting with CST, in March of 1988. Despite the initial statement by Friedlander that the review would be limited, the Los Angeles office initially assigned four full-time agents to the review, and after eight weeks, another four full-time agents were added. This staffing represented 48 personnel weeks or roughly one year of IRS time. Friedlander and his superior, defendant Owens, testified that these examinations were the "most sweeping" examinations these officials had witnessed, "far exceeding" any they had previously experienced, and that the volume of information provided was "truly record-breaking."

43. The examination of CST was completed on June 2, 1988. At that time, the IRS Branch Chief responsible for the review stated that the agents had found nothing to show inurement and affirmed that, as to CST, "we have no concerns at this time." These statements confirm the findings of a memorandum written by defendant Friedlander in November 1987 which stated that private benefit ceased to be an issue following the death of L. Ron Hubbard in January 1986. Following the completion of the

examination fo CST, the IRS Los Angeles office began its review of RTC, which was completed in June 1988 -- again with no concerns raised by the agents.

44. On June 22, 1988, the Church discovered that in May 1988, defendants Corsi, Young and Roth secretly interviewed two disaffected Scientologists, Richard and Vicki Aznaran, who were suing CSI and other Scientology churches. Prior to leaving the Scientology faith in 1987, Vicki Aznaran had served as one of RTC's officers. These defendants had engaged in deceitful conduct designed to prevent the Churches from discovering that the IRS investigation was actually proceeding on two tracks: one known to the Churches, which was based ostensibly on good faith cooperation between the churches and the IRS, and the other which was covert and designed to undermine the progress the Churches believed had been made towards the granting of exempt status. The discovery of this conduct raised serious concerns about whether the IRS was proceeding in good faith and in accordance with the March 17, 1988 agreement. The Churches immediately sought a meeting with the IRS to discuss their concerns.

45. It was later revealed that defendant Lipkin of the CID was instrumental in arranging the interview of the Aznarans by the EO agents, thus demonstrating the continuing ties between EO and CID. Plaintiff, RTC and CST were also not aware at the time that the two senior LA EO agents in the examination, defendants Young and Corsi, had met several times with LA CID during the review, that defendant Lipkin had briefed all of the agents involved in conducting the review,

and that defendants Corsi and Young had by this time received and reviewed the Special Agent's Report. Thus, CID collusion with LA EO did not end in 1985 when IRS District Counsel rejected CID's request for prosecution, nor in 1986 when the Justice Department refused to convene a grand jury.

46. During their interview of the Aznarans, defendants Corsi, Young and Roth openly displayed their animus toward the Church and the Scientology religion. The agents referred to Church religious services as a "dog and pony show", and referred to members of the Church as "crazy devotees". Defendant Young actually encouraged the Aznarans to "take a stand" against the Church. Defendant Roth compared the Scientology religion to drug addiction. These actions violate Internal Revenue Service policies which require an employee to maintain "strict impartiality" between the taxpayer and the government. These agents, who openly denigrated the Scientology religion, should have been removed from any examinations of Scientology churches under The Internal Revenue Manual, Handbook of the Rules of Conduct which indicates that an agent should be removed if his actions could lead others reasonably to question the employee's impartiality. I.R.M. 0735.1, Handbook of Employee Responsibilities and Conduct § 232.21, MT 0735.1-17 (November 26, 1986).

47. On June 22, 1988, plaintiff contacted IRS representatives from the Los Angeles office and asked why the the summonses had been issued to the Aznarans. The IRS refused to discuss the interview or confirm that it had taken place. Church counsel informed the IRS that the document review was

accordingly being suspended until the matter was resolved with the National Office. On June 24, 1988, in response to a letter from the Church regarding its concerns that the document review was apparently being conducted in bad faith, defendant Friedlander admitted that the IRS "owed [the churches] an explanation."

48. In January of 1988, prior to the start of the on site review, final adverse determinations were already drafted and circulated by Friedlander and Darling. After June 27, 1988, while the Churches were awaiting defendant Friedlander's promised explanation, the IRS finalized the adverse determination letters from the pre-existing drafts without substantive amendment. On July 7, 1988, the IRS informed CST that in its view the IRS had proceeded in accordance with the March 17 agreement and that it viewed the suspension of the audit as a termination of that agreement.

49. The following day, July 8, 1988, plaintiff and the other Churches wrote the IRS reiterating that they had not terminated the examination, but were waiting for the promised explanation regarding the Aznaran interview. The letters stated that the Churches did wish to fulfill the terms of the March 17, 1988 agreement, and that all they sought was a meeting with the IRS to clarify matters before the examination procedure resumed. That same day the IRS issued final adverse ruling letters to all three churches denying tax-exempt status. These letters were nearly identical to those drafted six months earlier by Friedlander and Darling. Despite previous assurances to the contrary, the denials of the applications of

plaintiff and RTC were based, in part, on alleged commercialism in the sale of religious goods and services.

50. The IRS on-site review procedure was an utter sham, designed not to make any good faith determination of the tax exempt status of plaintiff, but merely to continue to collect information which would not otherwise have been provided to the IRS. The on-site reviews also included examination of myriad ecclesiastical and confidential Church scriptural materials and other materials concerning the religious practices of the Churches which had no reasonable relation to any tax exemption issue.

51. The defendants, and each of them, by their conduct alleged herein, have singled out plaintiff because of its position as Mother Church of the Scientology religion and, through those acts, have invidiously discriminated against plaintiff in their application of the laws of the United States, in violation of the Establishment Clause of the First Amendment to the United States Constitution.

52. The defendants, and each of them, by their conduct alleged herein, have singled out plaintiff for invidious discrimination in the application of the laws of the United States on the basis of plaintiff's religious affiliation, in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

53. The conduct of the defendants, and each of them, has been arbitrary and capricious, and has resulted in the deprivation of plaintiff's property. Such conduct, motivated by religiously rooted bias and prejudice, is a violation of the

Due Process Clause of the Fifth Amendment to the United States Constitution.

54. Plaintiff has been damaged and continues to be damaged thereby in an amount to be proven at trial. That amount is not presently capable of precise calculation but is believed to be in excess of $20,792,850 which represents direct expenditures by plaintiff. Plaintiff has also suffered consequential and resulting damages in an amount to be proven at trial, but which is in an amount in excess of $100 million.

THIRD CLAIM FOR RELIEF

(For First and Fifth Amendment Violations by All Defendants)

55. The Church repeats and realleges each and every averment set forth in paragraphs 1 through 54, inclusive.

56. The IRS began additional harassive actions against plaintiff and Scientology parishioners commencing in October, 1988, when the IRS issued letters to several Scientologist taxpayers, who had claimed deductions on their tax returns for money paid to their Scientology churches for religious services, informing them that their cases were part of a "designated tax shelter litigation project entitled Scientology." Such a designation was blatantly improper and demonstrated discriminatory bias and creation of a suspect category of members of the Scientology religion.

57. Similarly, on February 14, 1989, the IRS office in Laguna Niguel, California sent a letter to two Scientologists concerning Church-related deductions, stating that no deduction would be allowed as they had not shown that Scientology is "other than a sham designed for the purpose of claiming

fictitious charitable contributions." This statement, too, was blatantly false and the result of bias, since even the IRS has repeatedly acknowledged that Scientology is a bona fide religion and that Scientology churches are bona fide churches. The IRS was forced to correct their files to delete these references after the Scientologists who received this letter prevailed in Smith v. Brady, No. CV 89-2584-RG(Bx) (C.D. Cal. 1990). Indeed, the IRS acknowledged that such designations were improper in a national office memorandum issued in 1986, yet the IRS continued labelling Scientologists as tax protestors as late as 1989.

58. Documents obtained in FOIA litigation reveal an entire set of procedures set up for the purpose of targetting the tax returns of individual Scientologists, monitoring and coordinating the investigations of these individuals, and falsely designating them as "tax protestors." These documents, from the Los Angeles District, show that the returns of Scientologists who claim deductions for their contributions to the Church are designated with a special code for "Alleged Contributions (incl. Scientology & Alleged Church)". This code is part of the Tax Protestor Program described in the Internal Revenue Manual, and allows the returns, which are treated as "priority cases," to be "controlled" through the IRS' nationwide computer system. A special questionnaire for Scientology cases is included for use by IRS examiners. An internal memo, designed to assist IRS examiners in handling these cases, lists several organizations which have never even existed, and claims that these are names used by the "Church of

Scientology."

59. Defendant Melvin Blough attempted to utilize the Church audit procedures of 26 U.S.C. § 7611 to identify thousands of parishioners of the Church of Scientology Flag Service Organization ("CSFSO") for the purpose of selecting their personal tax returns for audit. Blough testified that he wished to obtain records from CSFSO which would: (a) identify all of its parishioners for a three year period; (b) identify each of the courses delivered by CSFSO and describe them; (c) identify the courses taken by the parishioners; and (d) pull the tax returns of a number of these individuals. Blough stated that CSFSO provides courses to an estimated 8,000 parishioners a year, and further claimed that the IRS would use as many agents as needed to compile this information. In fact, nearly 100 parishioners of CSFSO have received audit notices regarding their contributions to the Church since Blough announced his plans. Blough also utilized the Cult Awareness Network ("CAN") as a means to improperly gather information regarding the Church. CAN is a modern day hate group, whose tactics include kidnapping, brainwashing and beating of individuals found to be guilty of holding "unacceptable" religious convictions. Despite these activities, CAN was granted tax exempt status by the IRS, and was used by Blough as an information gathering arm, for the purpose of procuring information on individual Scientologists and their businesses.

60. Assaults on churches of Scientology by or as a result of actions by IRS personnel have not been limited to the borders of the United States. William Connett is now stationed

as the IRS' foreign representative in France where he has a wide range of influence in European countries. Since his posting there have been raids on churches of Scientology by police and taxing authorities and unwarranted arrests of individual Scientologists in France, Italy and Spain. When two staff members of the Church of Scientology in Brussells were initially denied visas to travel to the United States, this was traced directly back to false information provided to the consulate officials by Connett.

61. In an effort to harass, discredit and smear plaintiff, to intimidate IRS employees who might otherwise treat plaintiff fairly or disclose IRS misconduct, and to evade FOIA disclosure obligations, defendant Keith Alan Kuhn has begun to proliferate unsubstantiated and patently false allegations against Scientology and Scientologists, which have been used as a pretext to manufacture security risks to IRS employees. In or about May 1990, Kuhn sent out a memorandum to each of the Regional Inspectors around the country, directing them to contact specifically named EO employees who were working on Scientology cases. Based on scurillous and unsubstantiated charges, Kuhn directed that these EO employees be told that there was a potential for harassment against them from the Church, thus creating a climate where plaintiff and other Scientology churches could not possibly receive unbiased treatment from any EO agent throughout the country. Kuhn's allegations themselves are entirely without merit. The IRS filed a declaration by Kuhn which contained these charges in a FOIA case brought by a Scientology Church. The District Court

judge in that case ordered the declaration stricken from the record, describing it as "scurrilous" and "unfounded".

62. After the collapse of the criminal investigation and after denying section 501(c)(3) exemption to plaintiff, RTC and CST, the nationwide examination of exempt and nonexempt Scientology Churches and entities which had been planned early in 1986 was resuscitated by defendants and the IRS. A three-day meeting on Scientology was convened at the IRS National Office on October 19, 20 and 21, 1988 to coordinate nationwide actions against various Scientology Churches, including plaintiff.

63. That three-day meeting was ordered by defendant Brauer, organized and convened by defendant Owens, and chaired by defendant Friedlander. Also in attendance were:

a. EO Operations employee Tom Miller, who had drafted the 1986 proposal to re-examine the exempt Scientology Churches;

b. Roderick Darling;

c. LA EO Branch Chief Mel Joseph, along with defendants Young and Corsi;

d. Defendant Blough;

e. IRS agents from at least the Brooklyn, Baltimore, and Los Angeles Regional offices; and

f. IRS National Office representatives.

64. Various strategic plans for a continued IRS campaign directed at Scientology were discussed at the three-day meeting in October 1988. Defendant Young prepared and delivered a

briefing at that conference in which he proposed that and explained how the IRS could use the assessment of tax liabilities under the Federal Insurance Contribution Act ("FICA") and the Federal Unemployment Tax Act ("FUTA") to exploit the non-exempt status of various Scientology Churches, completely disregarding the fact that the Churches in question, including plaintiff, had filed waivers seeking exemption from those employment taxes which had been accepted by the IRS.

65. At that same three-day meeting, format material for a nationwide campaign of examinations of exempt and non-exempt Scientology Churches was distributed and discussed, and the decision was made during that meeting to commence tax inquiries of plaintiff, Church of Scientology Western United States ("CSWUS"), Church of Scientology Flag Service Organization ("CSFSO"), Founding Church of Scientology of Washington, D.C. ("FCDC") and Church of Scientology of Boston ("Boston Church"). Those inquiries in fact did commence, upon the issuance of notices of tax inquiry to those Churches which were circulated during that three-day meeting.

66. Upon receipt of the virtually identical notices of tax inquiry, plaintiff, CSWUS, CSFSO, FCDC, and the Boston Church responded by pointing out inaccuracies and deficiencies in the standardized, coordinated notices and, despite those infirmities, responded to the questions posed by those notices. In each instance, however, the IRS issued a notice of church examination under the Church Audit Procedures Act, 26 U.S.C. § 7611. In four of those, summonses were issued and summons enforcement proceedings commenced in the appropriate district

court. In the CSFSO case, the matter is still pending in the United States District Court for Middle District of Florida; this Court, the Honorable Harry L. Hupp, presiding, quashed the majority of both the summonses issued to CSWUS and plaintiff; the United States District Court for the District of Massachusetts quashed the summons to the Boston Church outright. The FCDC examination was conducted, and despite nearly two years of intrusive inquiry, the IRS declined to cancel FCDC's exemption.

67. The coordinated examinations of those five distinct churches were coupled with concurrently timed IRS activities directed against other Scientology Churches and individual Scientologists. These various coordinated activities against Scientology are the responsibility of what defendant Owens has described as "thousands of [IRS] employees in key districts and district offices around the country and the National Office." Those coordinated actions have also been the subject of later meetings on Scientology at the IRS National Office, involving as many as 40 attendees from different IRS regions and divisions, in pursuit of what the SAR termed the "final halt to" and "ultimate disintegration of" Scientology.

68. Such coordination of IRS offenses against Scientology Churches and Scientologists generally also reaches down to the LA District level. Since approximately July 1989, monthly meetings have been held at the Pasadena, California courthouse that houses the United States Court of Appeals for the Ninth Circuit, to coordinate the actions of the Los Angeles EO (represented at such meetings by defendant Young), Examinations

Division, and upon information and belief, LA CID. These monthly meetings are arranged and coordinated by the Los Angeles District Counsel's office, and are attended by a number of District Counsel staff and, in fact, are chaired by defendant Jeglikowski, who supervises the meetings and the matters coordinated therein, against plaintiff and other Scientology Churches in disregard of the Constitution, the Internal Revenue Code, and policies set forth in the Internal Revenue Code. A regular topic of these meetings has been civil lawsuits involving plaintiff and other Scientology churches. The cases specifically include the civil suit filed by the Aznarans, and a case involving a former attorney for the Church. Defendant Jeglikowski has met with an attorney for one of the civil litigants, for purposes of coordinating actions between the IRS and the civil litigants against plaintiff.

69. The monthly meetings in Pasadena, like the meetings held from time to time at the National Office, are the vehicles by which defendants have singled out a religion and its churches and parishioners for singular and unfair treatment based upon their religious affiliation and set about to administer the Internal Revenue Code in a manner designed specifically to affect such co-religionists in an arbitrary and capricious manner, and to cause the harm hereinafter averred.

70. Plaintiff has made repeated efforts to resolve any legitimate concerns on the part of the IRS. As shown above, the Church has provided voluminous information to the IRS over the years to allay any concerns and to respond to any legitimate questions. These efforts on the part of the Church

have been either been perverted (as in the use of this information for purposes of a CID investigation), or rebuffed. Within the past few months, plaintiff once again attempted to resolve various issues with EP/EO representatives, including defendant Owens. However, the IRS continuously demanded the production of voluminous quantities of documents as a precondition for further talks. Most of the information requested had previously been provided to the IRS over the past years, yet the EP/EO representatives demanded it once again. When informed that the production of documents being requested on a voluntary basis was so extensive as to require months if not years to review, one representative of EP/EO remarked that this did not concern him, as he had twelve years left in the IRS before retirement.

71. The defendants, and each of them, by their conduct alleged herein, have singled out plaintiff for invidious discrimination in the application of the laws of the United States on the basis of plaintiff's religious affiliation, in violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment to the United States Constitution.

72. Plaintiff has been damaged and continues to be damaged thereby in an amount to be proven at trial. That amount is not presently capable of precise calculation but is believed to be in excess of $20,792,850 which represents direct expenditures by plaintiff. Plaintiff has also suffered consequential and resulting damages in an amount to be proven at trial, but which is in an amount in excess of $100 million.

73. The conduct alleged herein is ongoing and, unless

enjoined by this Court through an order forbidding defendants from any and all further participation in any matter involving the IRS and plaintiff or any other Scientology Churches or any other Scientology entities or parishioners, the harm alleged herein will continue and the Constitutional violations will persist to plaintiff's detriment.

FOURTH CLAIM FOR RELIEF

(For Fifth Amendment Violations by All Defendants)

74. The Church repeats and realleges each and every averment set forth in paragraphs 1 through 73, inclusive.

75. Defendants have, in the course of conduct hereinabove averred, acted in violation of the Constitution, the laws of the United States, and the policies, and procedures, and practices of the IRS created by the IRS for the benefit of taxpayers. Such conduct is a denial of plaintiff's due process rights as set forth in the Fifth Amendment to the United States Constitution.

76. Plaintiff has been damaged and continues to be damaged thereby in an amount to be proven at trial. That amount is not presently capable of precise calculation but is believed to be in excess of $20,792,850 which represents direct expenditures by plaintiff. Plaintiff has also suffered consequential and resulting damages in an amount to be proven at trial, but which is in an amount in excess of $100 million.

77. The conduct alleged herein is ongoing and, unless enjoined by this Court through an order forbidding defendants from any and all further participation in any matter involving the IRS and plaintiff or any other Scientology churches or any

other Scientology entities or parishioners, the harm alleged herein will continue and the Constitutional violations will persist to plaintiff's detriment.

WHEREFORE, plaintiff Church of Scientology International prays that:

78. Defendants, and each of them, be preliminarily and permanently enjoined from any and all further participation in and responsibility for any matter involving the IRS and plaintiff or any other Scientology Church or entity, or any Scientology parishioner;

79. Plaintiff be awarded damages according to proof, which are believed to be in excess of $20,792,850 in direct expenditures by plaintiff, and consequential and resulting damages in an amount to be proven at trial, but which is in an amount in excess of $100 million, and

80. The Court award and order such other and further relief that it deems appropriate under these circumstances.

Dated: August 12, 1991

Respectfully submitted,

QUINN, KULLY AND MORROW

COOLEY, MANION, MOORE &
JONES, P.C.

BERRY & CAHALAN

BOWLES & MOXON

WILLIAM T. DRESCHER

By: Wm. T. Drescher
William T. Drescher

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

JOHN G. PETERSON, ESQ.
PETERSON & BRYNAN
8530 Wilshire Boulevard, Suite 407
Beverly Hills, California 90211
(213) 659-9965

Attorneys for Plaintiff and Cross-Defendant
Church of Scientology of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California Corporation, Plaintiff, v. GERALD ARMSTRONG, et al., Defendants.	CASE NO. C 420 153 FURTHER RESPONSE TO ORDER OF JULY 2, 1985; REQUEST FOR STAY; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF JOHN G. PETERSON
AND RELATED CROSS-ACTION	DATE: February 12, 1986 TIME: 9:00 a.m. DEPT: 57

PLEASE TAKE NOTICE that on February 12, 1986, at 9:00 a.m. or as soon thereafter as counsel may be heard, in Department 57 of the above-entitled court, located at 111 North Hill Street, Los Angeles, California, Cross-Defendant Church of Scientology of California will move for a stay of the Court's order of July 2, 1985 as set forth herein.

Also, set forth herein is cross-defendant's further response to the Court's order of July 2, 1985.

This Motion is brought pursuant to Code of Civil Procedure Section 128(8), Evidence Code Section 320, the attached Memorandum of Points and Authorities, the attached Declaration of John G. Peterson, the pleadings on file in the above-named case, and all such matters oral and documentary as may be brought to the attention of the Court at or prior to the hearing on this Motion.

Dated: January 22, 1986

Respectfully submitted,

PETERSON AND BRYMAN

By: John G. Peterson
JOHN G. PETERSON, ESQ.

Attorneys for Cross-Defendant
Church of Scientology of
California

MEMORANDUM OF POINTS AND AUTHORITIES

I

PRELIMINARY STATEMENT

The Church of Scientology of California [hereinafter the "Church"] is now faced with either "possible contempt or other sanctions" as threatened by this Court in its order of July 31, 1985, or with submission to the destruction of its First Amendment rights and the near certainty of false claims concerning the disclosure of information from its auditing files should Gerald Armstrong [hereinafter "Armstrong"] ever receive them through discovery.

On July 2, 1985, this Court issued an order requiring the Church to produce, for an in camera inspection, the auditing or preclear files relating to Gerald Armstrong. The Court also ordered the Church to produce or furnish for inspection "all matter which reflects any statement, or summary of statements" made by Armstrong contained in those auditing files.

After several stays of the Order were entered and vacated, this Court on December 9, 1985, ordered that compliance be made to its order of July 2, 1985, as modified, within twenty days -- by January 3, 1985. A stipulation between the parties continuing compliance until January 22, 1986, was subsequently filed and granted.

In Armstrong's Third Amended Cross-Complaint, he alleges in the fraud cause of action that auditing disclosures were represented to him to be completely confidential and that this was false (page 17 section e and page 18 paragraph 15) and is also alleged under the Breach of Contract cause of action (page 28, paragraph 39 and page 30, paragraph 42). In Armstrong's second cause of action for Intentional Infliction of Emotional Distress at page 23, paragraphs 23 and 24, he alleges that the Church "disclosed to third persons the confidential information disclosed by Cross-complainant during auditing." Armstrong supports his need to discover his preclear folders based on these claims in his complaint; however, he has been unable to show any facts or evidence to support these claims.

At no point, either in discovery or in the underlying trial, has Armstrong been willing or able to state exactly what information was supposedly disseminated from the auditing files and to whom.

> "Q Do you contend that at any time since December 12, 1981, any confidential material contained in an auditing or pre-clear or any other kind of confidential file has been disseminated concerning you?
>
> "A Excuse me?
>
> "Q Do you contend that any confidential information contained in a pre-clear, auditing, or other confidential-type processing file has been disseminated concerning you?
>
> "A I don't know."

August 18, 1982 Deposition, pp. 230-231. Instead, he has made generalized statements. He makes speculative unsupported claims to "prove" that it happened to others and so must have happened to him. He now claims that he must first learn what information is in these auditing files before he can determine what information was disseminated. This is circular reasoning and surely improper pleading. A claim must be made on a good faith belief and some facts to support the belief in that claim. To plead a cause of action without any basis in an attempt to justify a fishing expedition and an unconstitutional intrusion into internal ecclesiastical folders is improper. It has always been the internal law of the Church that a preclear would never see his or her pc folder. Armstrong knew it, understood it and agreed to abide by this internal ecclesiastical law. This civil court cannot violate this constitutionally protected area of the religion. Serbian Eastern Orthodox v. Milivojevich, (1976) 426 U.S. 696 (the Court held that civil courts may not inquire at all into "matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law."; In Watson v. Jones, 13 Wall (80 U.S.) 666 (1872) the Court held that:

> "The judicial eye cannot penetrate the veil of the church for the forbidden purpose of vindicating the alleged wrongs of excised members; when they became members they did so upon the conditions of continuing or not as they and their churches might determine, and they thereby submit to the ecclesiastical power and cannot now invoke the supervisory power of the civil tribunals."

If Armstrong is allowed the ability to review the auditing files, and to determine what information is contained in them, he will plant forged documents, manufacture false evidence and suborn perjured testimony, and then falsely claim that this preclear information was disseminated by the Church.

The Church is gravely concerned about this likelihood for the following reasons:

1. The auditing files almost certainly contain information relating to the great majority of Armstrong's life, thereby allowing him to choose almost any traumatic event in his life , manufacture false evidence and claim that the Church disseminated that information;

2. Armstrong has admitted, under oath and after leaving the Church, that he knew of no dissemination of information from his preclear files;

3. Armstrong has admitted, in a videotaped interview, to creating forged documents for placement in Church files for the sole purpose of giving the false appearance of unethical or illegal actions committed by the Church; and

4. Armstrong has admitted, in a videotaped interview, his intention to commit perjury, as well as advising others that proof is not required to make allegations.

For these reasons, as detailed more fully below, the Church requests that Armstrong be required to execute an itemized, verified offer of proof regarding the information he alleges has been disseminated from auditing files before the court proceeds further. The Church is confident that Armstrong cannot show good cause why he needs the preclear folders. Also, a summary judgment motion to be filed by January 24, 1986, will make them irrelevant.

///

///

A. Information Demonstrating The Likelihood That Armstrong Will Falsely Claim Dissemination Of Auditing Files

In late 1984, Armstrong met and surreptitiously conspired with Church of Scientology staff members, known as the "Loyalists", whom he believed to be opponents of current Church management. In November, 1984, several police sanctioned videotapes were made of such meetings between Armstrong and these persons and, in April, 1985, these videotapes and portions of other written materials furnished by Armstrong to the Loyalists were introduced as exhibits in the trial of Julie Christofferson Titchbourne v. Church of Scientology, Mission of Davis, et al., Circuit Court of the County of Multnomah, Oregon, No. A7704-05184.

The videotapes show that during his meetings with the Loyalists, Armstrong made a number of admissions reflecting directly on his criminal state of mind and the reliability of his testimony. For example:

1. He admitted his intention to create forged documents, and indicated that he had done so previously:

> MR. ARMSTRONG: Well, I got a view, of course, from you, of course, that someone at least considered that I HELP [International Hubbard Ecclesiastical League of Pastors] was, you know, their Achilles heel, as it were. (LAUGHS) So we thought, "Shit, shouldn't I get some I HELP materials?" So hence I asked. Now issues, [Church bulletins] I wanted to know, number one, how they're run off, what the type face is like. Are these like this? You know -
>
> MR. JOEY: These are the real McCoys.

> MR. ARMSTRONG: You see, because I think that during a part of this, we can simply create these. You know, I can create documents with relative ease, (LAUGHS) you know; I did it for a living. (LAUGHS) Transcript of November 7, 1984, p. 4, attached hereto as Exhibit "A" to Declaration of John G. Peterson. (emphasis supplied)

2. He stated his intention to "bring them [Church management] to their knees." Transcript of November 7, 1984, p. 9, attached hereto as Exhibit "A" to Declaration of John G. Peterson.

3. He admitted that he had been involved in working against the Church even prior to the time that he officially left in December, 1981:

> MR. JOEY: What's your -
>
> MR. ARMSTRONG: My purpose?
>
> MR. JOEY: Yeah. For the Church.
>
> MR. ARMSTRONG: Well, my purpose initially is global settlement. I want that. I've done this shit now for going on three years, and even longer before that when I was inside . . . . Transcript of November 7, 1984, p. 13, attached hereto as Exhibit "A" to Declaration of John G. Peterson. (emphasis supplied)

Armstrong's own words above clearly show his intention and how he used the Court to satisfy his plans. He was plotting to bring church management to its knees so he could extort a settlement of his $81.4 million personal injury case. The videotape shows that even while he was still in the Church he was plotting his personal injury case and he lied to this Court when he testified that he stole documents to protect himself. He stole documents only to extort money from the Church and use in his personal injury case. The candid and recorded words out of Armstrong's own mouth show conclusively the lengths he will go in order to make and forward his personal injury case. Armstrong has no evidence of any dissemination from the pc folders and he is seeking access to them only to manufacture and plant false evidence to bolster his deficient claim.

4. He furnished a variety of "literary" materials, apparently for potential publication, to a member of the Loyalists, including the disgusting "Operation Long Prong" attached as Exhibit "E" to the Declaration of John G. Peterson. The extremes of illegality to which Armstrong was prepared to go in order to carry out this conspiracy is demonstrated by a blackmail and extortion scheme called "Long Prong" which Armstrong attempted to perpetrate. This was a plan to set up a senior Scientologist with a woman in order to upset his marriage, degrade his reputation within the Church and blackmail his cooperation in Armstrong's scheme to subvert Church of Scientology management. (See also p. 21 of Exhibit "A" for discussion of furnishing such "art work" for publication.)

5. While he claimed in the videotape that his goal was "global settlement," Armstrong admitted that it was still, if settlement failed, his intention to continue with his $81.4 million suit because "that's going to pay off sooner or later. "Exhibit "A" at p. 23.

6. As an example of how Armstrong would not hesitate

to commit perjury to support his case or a claim for damages, in testimony in Oregon he admitted that, despite his prior testimony in the underlying case herein that L. Ron Hubbard controlled the Church; in the subsequent Christofferson trial, he stated under oath that he did not know who was actually in control of the Church:

> MR. ARMSTRONG: Well, who is ASI? Who are these people? Give me an org board. Tell me who the opposition is, who knows what. Where does Marc Yager fit in all of this, you know, what is the actual line of control? Who is in charge? 'Cause someone is. . . . Transcript of November 9, 1984, p. 6, attached hereto as Exhibit "B" to the Declaration of John G. Peterson. (emphasis supplied)

7. He admitted that he would perjure himself, and attempted to suborn the perjury of "Mr. Joey":

> MR. ARMSTRONG: By the way, I'll never admit that anything comes from Michael [Flynn], including any complaints which I may have drafted. (Transcript of November 9, 1984, p. 7, attached hereto as Exhibit "B" to Declaration of John G. Peterson.

* * *

> MR. ARMSTRONG: Okay. What are our conversations, should it come down to it.
>
> MR. JOEY: What do you mean?
>
> MR. ARMSTRONG: What do we talk about? You're deposed. You walk out there and there's a PI, he hands you a paper saying you're deposed, Jack. And not only that, you're out of the organization. And, and what do you say in deposition? Well, Armstrong and I talked about this and he had a whole bunch of ideas about how to infiltrate the communication lines and spread turmoil and disaster, you know. What are we doing here? That's my question,

> before I'll tell you my ideas on documents.
> . . . .
>
> MR. ARMSTRONG: Okay. So as far as the doc - let me just say . . . ah, this is why we get together. We get together because I have a goal of global settlement. You have felt that the turmoil and abuses and so on have gone on too long - hence we get together and discuss things. We have not discussed anything about a destruction of the tech, or that Scientology is bad, or anything like that. Are we agreed? (Transcript of November 9, 1984, pp. 9-10, attached hereto as Exhibit "B" to Declaration of John G. Peterson.)

8. He proposed the creation of phony documents which could be spread throughout the Church through the use of internal communications lines:

> MR. ARMSTRONG: People can draft the stuff. Um, it just seems like - the guts of - you know, there's three things, right - there's personnel and comm lines and money. That's about it. An organization's comm lines are of various kinds, and I think that you can use the fact, you know, realize what their comm lines are and plug into them. That's all I was trying to convey. . . . Transcript of November 9, 1984, p. 7, attached hereto as Exhibit "B" to Declaration of John G. Peterson

* * *

> MR. ARMSTRONG: . . . So it seems to me that the use of the communication lines - I don't know maybe you guys are using them, but it seems to me that you don't have a way of printing anything to get an issue [Church document] on the lines, to use for anything, right? I'm saying that I can do it. I'm saying that I can type those goddamn things and duplicate them and make them look exactly the same. . . . (Transcript of November 9, 1984, p. 11, attached hereto

as Exhibit "B" to Declaration of John G. Peterson.) (emphasis supplied)

Armstrong's statements clearly indicate his willingness to plant documents in order to create false pictures and destroy the Church. If Armstrong had access to the preclear folders he could forge "Church" documents showing improper use of the preclear folders and plant these documents in the Church or have them anonymously mailed to his attorneys. If allowed access to these materials, he is obviously more than capable of anonymously sending them to the Los Angeles "Times" or to friends, solely to claim "dissemination" by the Church to support a non-existent claim and to boost his already outrageous damages demands. The Court must not forget that it is Armstrong and his counsel, Michael Flynn, who already appear to have violated this Court's sealing orders as set forth in the pending Motion to Initiate an Investigation. Their lack of respect for the privacy of others, as revealed in the Motion for Investigation, leads to the inescapable conclusion that they will not hesitate now to violate any sealing orders in exchange for the chance to falsely create "damages" for Armstrong.

This Court must also remember that Michael Flynn has also evidenced a propensity for the public dissemination of auditing information pertaining to his clients. On June 25, 1983, during a public speech he gave to a group calling itself "Phoenix" in Los Angeles, Flynn divulged auditing information relating to several of his clients -- Marjorie Hansen and Janet Troy. Flynn had obtained this information from another client of Flynn's who had wrongfully obtained the pc folders. (See Transcript of speech, attached to Declaration of John G. Peterson as Exhibit "F".) Where he thinks it to his benefit, as he might well here, Flynn has already proven himself capable of widely disseminating such information to the detriment of his client.

Having the preclear folders held either _in camera_ or under seal is no protection at all. Were the Church to produce the preclear files in chambers or under seal, the Court were to deny Armstrong access to the folders, counter-claimant could take a Writ and ask that the preclear folders be made an exhibit and part of the record. Sealed exhibits are not safe in Los Angeles Superior Court as proved in the underlying case when IRS agents wrongfully obtained access to and copied sealed materials. This court has already expressed its view that documents that come before this court become exhibits and open to the public. The history of this case proves that seals and _in camera_ submissions are meaningless.

The Court of Appeal has held that attorney-client privileged documents should not be viewed _in camera_. The Church strongly believes that priest-penitent documents hold an equal if not greater degree of privilege. Any submission either under seal or _in camera_ is not only a violation of the spirit of the law of privilege but an unconstitutional violation of the Church's rights.

The above examples, and others included in the attached Declaration of John G. Peterson, conclusively demonstrate that

Armstrong is willing to stoop to any lengths, including the commission of such illegal acts as conspiracy, perjury, subornation of perjury, and forgery to achieve the destruction or overthrow of the Church and to pursue his personal injury case. He appears to be unstable, as demonstrated by the exhibits to Mr. Peterson's declaration, and this type of instability lends great credence to the Church's belief that he will use materials from the auditing files to falsely claim information has been disseminated. Armstrong knows that there is no factual basis for his claim that the Church has disseminated preclear information, and the request for the auditing files has been no more than a desperate attempt gain information to allow him to manufacture and plant phony documents to support his allegations.

II.

BECAUSE A DISPOSITIVE MOTION IS SOON TO BE FILED PENDING, A STAY SHOULD BE GRANTED UNTIL THESE ARE HEARD

The Church has raised serious objections to this Court's Order of July 2, 1985. Nonetheless, this Court has chosen to ignore those objections, and to order the production of sacred and ecclesiastical materials. The circumstances now existing demand an equitable solution. This Court should stay its Order pending resolution of the Motion for Partial Summary Adjudication of Issues which the Church will be filing on January 24, 1985. The granting of that Motion will dismiss those portions of the cross-complaint relating to dissemination of auditing information and will moot that section of the order of July 2, 1985 ordering production of the auditing files. This Court must also stay its Order of July 2, 1985 pending resolution of the Motion to Initiate an Investigation as the results of that investigation will clearly point out the danger of wrongful access to confidential materials surrendered to the Court or turned over to Armstrong and his counsel. The results of that investigation will be conclusive that these preclear folders must remain with the Church to protect everyones' interests of privacy and confidentiality, even Armstrong's.

III

THIS COURT HAS THE AUTHORITY TO ENSURE JUSTICE RESULTS BY SETTING THE ORDER IN WHICH EVIDENCE IS INTRODUCED

Code of Civil Procedure § 128(a)(8) authorizes this Court to take the steps necessary to ensure that justice results from the current situation:

> "(a) Every court shall have the power to do all of the following:
>
> . . .
>
> (8) To amend and control its process and orders so as to make them conform to law and justice."

Moreover, Evidence Code § 320 specifically authorizes this Court to establish the order in which proof is presented:

> "Except as otherwise provided by law, the court in its discretion shall regulate the order of proof."

Together, these code sections clearly authorize this Court to amend its order of July 2, 1985 by requiring that Armstrong furnish an itemized, verified offer of proof.

IV

CONCLUSION

This Court has the inherent power to ensure that justice results from its rulings. It should require Armstrong to furnish an itemized, verified offer of proof as to the specific information he alleges has been disclosed from the auditing files relating to him. It should also stay execution of its Order of July 2, 1985 until the Motion for Partial Summary Adjudication of Issues has been resolved, and until the pending Motion for Investigation has been resolved and the investigation completed. To do otherwise, in view of Armstrong's admitted intention to commit perjury, to forge and plant documents in files, and his extreme instability, would create injustice and inequity.

Dated: January 22, 1986

Respectfully submitted,

PETERSON AND BRYNAN

By: John G. Peterson
JOHN G. PETERSON, ESQ.
Attorneys for Cross-Defendant
Church of Scientology of
California

Earle C. Cooley
COOLEY, MANION, MOORE & JONES, P.C.
21 Custom House Street
Boston, Massachusetts 02110
(617) 737-3100

William T. Drescher
23679 Calabasas Road, Suite 338
Calabasas, California 91302
(818) 591-0039

Attorneys for Defendants
CHURCH OF SPIRITUAL TECHNOLOGY and
RELIGIOUS TECHNOLOGY CENTER

Eric Lieberman
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.
740 Broadway at Astor Place
New York, New York 10003-9518
(212) 254-1111

John J. Quinn
QUINN, KULLY & MORROW
520 S. Grand Ave., 8th Floor
Los Angeles, CA 90071
(213) 622-0300

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Blvd.,
Suite 2000
Los Angeles, CA 90028
(213) 661-4030

Attorneys for Defendant
CHURCH OF SCIENTOLOGY
INTERNATIONAL

Michael Lee Hertzberg
740 Broadway, Fifth Floor
New York, New York 10003
(212) 982-9870

James H. Berry, Jr.
BERRY & CAHALAN
2049 Century Park East
Suite 2750
Los Angeles, CA 90067
(213) 284-2183

Attorneys for Defendant
AUTHOR SERVICES, INC.

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and
RICHARD N. AZNARAN,

Plaintiffs,

v.

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, et al.,

Defendants.

AND RELATED COUNTERCLAIMS.

CASE No. CV 88-1786 JMI(Ex)

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS COMPLAINT WITH PREJUDICE; DECLARATIONS OF SAM BROWN, THORN SMITH, EDWARD AUSTIN, LYNN R. FARNY AND LAURIE J. BARTILSON

DATE: To be determined
TIME: To be determined
COURTROOM: Hon. James M. Ideman

When the Court entered its Order of July 22, 1991, vacating the appearance of Joseph A. Yanny ("Yanny") as counsel for plaintiffs because that appearance was "inappropriate and highly prejudicial to Defendants," and reinstating Ford Greene ("Greene") as plaintiffs' counsel, the Court undoubtedly intended that Yanny's participation in this case would cease. Defendants predicted that mere disqualification of Yanny would not cure the deep-rooted problem, and accordingly filed their Motion to Dismiss the Complaint. It has now come to defendants' attention that Yanny's involvement in this case has in fact survived that Order, and that Yanny has returned to his covert representation of the Aznarans, similar to the arrangement that existed prior to his direct entry into the case. As a result of this information, defendants are forced to supplement their motion to dismiss the complaint with prejudice, to bring to the Court's attention Yanny's continuing participation in this matter as additional grounds warranting dismissal.

There are two manifestations of Yanny's ongoing aid to the Aznarans that are known to defendants. At this time, they can only speculate as to what other involvement exists. The assistance furnished by Yanny has taken the visible form of supplying Greene with help from two of Yanny's present or former employees.

The first of these employees, John Koresko, was formerly the office manager, and later a paralegal for Yanny's law firm, during the pendency of this litigation, Yanny's own litigation with defendants herein and during the time that Yanny was counsel to these defendants. (Ex. A, Deposition of John Koresko, at 65-67.) Yet, as more fully detailed in the declarations of Edward Austin, Thorn Smith and Lynn R. Farny, subsequent to Yanny's disqualification from representing the Aznarans, Koresko was seen at Greene's office on August 3 and 4. On August 3, Koresko arrived at Greene's office at 5:14 p.m. and was not observed leaving.[1]

The extensive involvement of Yanny's other employee in this case following Yanny's disqualification also recently came to the attention of defendants. On August 19, 1991, by order of the Court extending their time to respond, plaintiffs had oppositions to six motions due. (Order of August 9, 1991.) On that date, Greene filed three papers with the Court, oppositions to two summary judgment motions and a 53-page "Appendix." During the time period in which those papers were being prepared, an individual named Gerald Armstrong ("Armstrong") was observed at Greene's office each day from August 15 through 19 for most of each of those days. (Ex. D, Declaration of Sam Brown; Ex. E, Declaration of Lynn R. Farny.) In addition, when Laurie Bartilson, counsel for defendant Church of Scientology International, called Greene's office on August 19 to arrange to have a courier pick up the oppositions, the telephone was answered by a person who identified himself as Gerald Armstrong ("Armstrong"). (Ex. F, Declaration of Laurie J. Bartilson, para. 3.) When queried as to his presence there, Armstrong stated that he was "helping out." (Id.) Additional papers were late-filed with the Court by Greene on August 23, and not surprisingly, Armstrong's presence at Greene's office continued after the August 19 filings for several more days. (Ex. D, Declaration of Sam Brown, para. 3.)

---

[1] While plaintiffs may try to pass off Koresko's presence as a simple matter of returning the case files, this is belied by the sworn testimony of their varying counsel. Yanny claimed on July 31, 1991, that he had never received the file from Greene. (Ex. B) On August 1, 1991, Greene swore that he had sent the file to Los Angeles by Federal Express on June 27, 1991. (Ex. C, Declaration of Ford Greene, para. 11.) He claimed that he then received the case file from his new co-counsel, Mr. Elstead - not Yanny - on July 31, 1991, three days before Koresko's appearance at Greene's offices.

Armstrong has recently been identified as a paralegal hired by Yanny to work with him on this case. Yanny represented in argument to Los Angeles Superior Court that he had "hired Armstrong as a paralegal to help [him] on the Aznaran case." (Ex. G, Reporter's Transcript of August 6, 1991, at 25.) Armstrong confirmed this characterization, as did Yanny in a declaration. (Ex. B, Declaration of Joseph A. Yanny, July 31, 1991, para. 4; Ex. H, Declaration of Gerald Armstrong, July 19, 1991, para. 4.) As Armstrong is Yanny's paralegal on this case, his new affiliation as an assistant to Ford Greene is truly outrageous. Not only has Yanny been disqualified point blank by the Court from representing the Aznarans, he has also been forbidden from directly or indirectly acting as counsel against defendants on behalf of the Aznarans or Gerald Armstrong by preliminary injunction entered on August 6 at the hearing in which the statement was proffered that Armstrong was his paralegal on this case. Religious Technology Center, et al. v. Yanny, et al., Case No. BC 033035. (Ex. G, Transcript of August 6, 1991, at

3-4.)

This Court disqualified attorney Barry Van Sickle from representing plaintiffs as being "an extension of Joseph Yanny's continuing involvement in the instant action." (slip. op. September 6, 1988). Here again, Yanny's involvement in this case continues, this time through a different "extension" -- the improper activities of Yanny's paralegal, Gerald Armstrong, whose actions are just as improper as they would be if done by a lawyer. In re Complex Asbestos Litigation 91 D.A.R. 8849 (1991).

That Armstrong is amenable to the kind of covert representation in which Yanny is engaging in this case is highlighted by his recorded remarks made in November 1984. At that time, Armstrong was plotting against the Scientology Churches and seeking out staff members in the Church who would be willing to assist him in overthrowing Church leadership. The Church obtained information about Armstrong's plans and, through a police-sanctioned investigation, provided Armstrong with the "defectors" he sought. On November 30, 1984, Armstrong met with one Michael Rinder, an individual whom Armstrong thought to be one of his "agents" (but who in reality was loyal to the Church). In the conversation, recorded with written permission from law enforcement, Armstrong stated the following in response to questions by Mr. Rinder as to whether they had to have actual evidence of wrongdoing to make allegations in Court against the Church leadership:

> ARMSTRONG: They can allege it. They can allege it. They don't even have -- they can allege it.

RINDER: So they don't even have to -- like -- they don't have to have the document sitting in front of them and then --

ARMSTRONG: Fucking say the organization destroys the documents.

* * *

Where are the -- we don't have to prove a goddamn thing. We don't have to prove shit; we just have to allege it.

(Ex. E, Declaration of Lynn R. Farny, para. 6.) With such a criminal attitude, Armstrong fits perfectly into Yanny's game plan for the Aznaran case.

It is apparent that Yanny's disqualification from this case has simply driven him back underground. He challenged the Court by appearing directly in this case and lost. So he now sends his paralegals to aid Greene in his prosecution of the case, thereby doing indirectly what this Court and the Los Angeles Superior Court have forbidden him to do at all. Greene and the Aznarans are obviously aware that the Court disqualified Yanny and ruled his participation in this case to be "highly prejudicial to Defendants" because of Yanny's former representation of defendants. This was the same order which removed Yanny and put Greene back into the case as plaintiffs' counsel. Thus, the Aznarans, their former attorney and their present attorney are equally culpable for permitting Yanny to continue his participation in this case to the adjudicated

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///

prejudice of defendants. Only the remedy of dismissal can possibly disable their collusion in violation of defendants' rights permanently.

Dated: August 26, 1991

Respectfully submitted,

Wm. T. Drescher
WILLIAM T. DRESCHER

Earle C. Cooley
COOLEY, MANION, MOORE
& JONES, P.C.

Attorneys for Defendants
CHURCH OF SPIRITUAL TECHNOLOGY
and RELIGIOUS TECHNOLOGY CENTER

Eric Lieberman
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.

John J. Quinn
QUINN, KULLY & MORROW

Laurie J. Bartilson
BOWLES & MOXON

Attorneys for Defendant
CHURCH OF SCIENTOLOGY
INTERNATIONAL

Michael Lee Hertzberg

James H. Berry, Jr.
BERRY & CAHALAN

Attorneys for Defendant
AUTHOR SERVICES, INC.

u Tabs Co. 1-800-322-3022

Form EXS-8

A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

- - -

RELIGIOUS TECHNOLOGY CENTER, et al., Plaintiffs, vs. JOSEPH A. YANNY, et al., Defendants.	No. C690211

DEPOSITION OF

JOHN J. KORESKO

LOS ANGELES, CALIFORNIA

TUESDAY, JANUARY 10, 1989

ATKINSON-BAKER AND ASSOCIATES
CERTIFIED SHORTHAND REPORTERS
704 South Victory Boulevard, Suite E
Burbank, California 91502
(818) 566-8840

REPORTED BY: KAREN E. HOIDA, CSR NO. 7081

FILE NO.: 890032

APPEARANCES

FOR PLAINTIFFS:

WYMAN, BAUTZER, KUCHEL & SILBERT
BY: JAMES H. BERRY, ESQ.
2049 Century Park East
14th Floor
Los Angeles, California 90067

FOR DEFENDANTS:

CUMMINS & WHITE
BY: SILVIO T. NARDONI, ESQ.
1600 Wilshire Boulevard
Los Angeles, California 90017-1695

ALSO PRESENT:

NICOLE GARCIA
Video Technician

ARON MASON
Paralegal

THERE IS NO PAGE 6690

I N D E X

WITNESS: JOHN J. KORESKO

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Examination	
By Mr. Berry	5

EXHIBITS:

Plaintiffs'		Page
1	Notice of deposition	17
2	200 pages of various documents produced in response to document request	159

QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:

(None)

INFORMATION TO BE SUPPLIED:

(None)

a paralegal. Then I was elevated to a different position, and then I -- at a given point in time I went back to paralegal.

Q. Okay. When did you first become employed at Herzig & Yanny?

A. March '85.

Q. In what capacity?

A. Paralegal.

Q. What kinds of things did you do as a paralegal then?

A. Research, draft documents, engage in discovery, sit in on depositions. Normal paralegal things. Write memos.

Q. How long did you have that responsibility?

A. About four months.

Q. Did your responsibility change?

A. Yes. A -- Joe elevated me to an office manager position. He needed a central figure in the office to correlate the functions, so he felt that I had the qualifications to make it a cohesive office.

Q. And you were reporting directly to him in that capacity?

A. Directly to him.

Q. How long did you hold that job?

A. From approximately June '85 to October '87.

Q. October '87?

A. '87.

Q. Were you continuously employed by Herzig & Yanny during that period?

A. Yes.

Q. Did your job function change in October of '87?

A. I quit.

Q. Did you go to work for somebody else?

A. No.

Q. Just quit?

A. I just had to get away. It was -- I quit, but it was like a leave of absence type thing. I just had to get away. Pressures, you know. The girl pressures, office pressures, money pressures.

Q. Just needed a break?

A. Los Angeles.

Q. Did you leave the city?

A. As a matter of fact, I did. I went to Texas, spent a few weeks in Texas with my brother, communed with nature in Arizona and Death

Valley, and just generally bummed around, feeling sorry for myself.

Q. And then came back to work at Herzig & Yanny?

A. Came back to work.

Q. And that --

A. They made me an offer I couldn't refuse.

Q. That was in December of '87?

A. December of '87 I came back to work.

Q. Okay.

A. In a lesser capacity, less responsibility.

Q. When you came back as a paralegal in December of '87, was there a particular person or persons who were designated as the office manager?

A. No.

Q. Has there been since?

A. No, sir.

Q. Is there any person who discharges that function of being an administrative coordinator or office manager?

A. I do a lot of the functions unofficially. Mr. Yanny would be the last word on decisions that I used to make.

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

I, KAREN E. HOIDA, CSR #7081, Notary Public for the State of California, certify:

That the foregoing proceedings took place before me at the time and place therein set forth;

That the testimony of the witnesses and all objections made at the time of the proceedings were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name and affixed my seal this 17th day of January, 1989.

OFFICIAL SEAL
KAREN E RIEGEL
NOTARY PUBLIC - CALIFORNIA
ORANGE COUNTY
My comm. expires MAY 21, 1990

Karen E Hoida

Notary Public in and for the
State of California

DECLARATION OF JOSEPH A. YANNY

I, Joseph A. Yanny, make the following declarations from personal knowledge and could competently testify as set forth below if called upon to do so.

1. Declarant is a member in good standing of the California State Bar.

2. I am not an attorney in fact or of record in any case between Gerald Armstrong and any Church of Scientology entity, nor have I been consulted in that regard by either Scientology or Mr. Armstrong with respect to his litigation. I am informed that Mr. Armstrong has done quite well without me. I am informed that the court of appeals has recently issued an opinion on July 29, 1991 in that regard.

3. Mr. Armstrong has consulted me on literary matters involving questions of intellectual property. I decline to disclose the substance of that consultation further, but I will note, however, for the record, that that consultation had nothing at all to do with Scientology and had no relationship at all to anything I ever worked on for Scientology.

4. I have considered employing and have employed Mr. Armstrong as a paralegal from time-to-time in the past. I believe it would be inappropriate, if not illegal, to require that I not employ ex-Scientologists. Mr. Armstrong's views on Scientology should not cost him employment with my firm or elsewhere.

5. In addition, Mr. Armstrong is a potential witness in litigation I am contemplating against Scientology and in the Aznaran case. For example, Scientology has recently libeled me by

publishing materials that, among other things, falsely represent that I was found to be taking drugs and was "unable to maintain an acceptable level of performance and professional conduct." In the context of discussing the litigation, the libelous statement is made that, "Yanny proceeded to break attorney-client confidences." The litigation is described as "concerning his breach of contractual agreement." (The text will be offered at the hearing.) These claims are libelous per se. I anticipate that Mr. Armstrong may be a witness in the resulting litigation. Mr. Armstrong and the undersigned share the common problem of having been sued maliciously by the plaintiffs herein and is a prospective witness in that regard.

6. I have reviewed the purported declaration of Marty Rathbun filed by plaintiffs in support of their request for injunctive relief. The declaration is essentially a fabrication. It is a false description of the conversations I had with Mr. Rathbun on that date. I address what was actually said below. At no time during those conversations did I make any "admissions" to Mr. Rathbun. I have not breached any remaining fiduciary duties, nor have I "confessed" any breaches to Reverend Rathbun. The allegations concerning Ken Rose are particularly bizarre. I have never even met Ken Rose and do not believe I have ever spoken to him. I do not know who he is or what he may doing to make himself a target. I certainly did not discuss him with Mr. Rathbun.

7. On the day in question, Friday, July 21, 1991, I had two discussions with Mr. Rathbun. The principal discussion took place in the courthouse cafeteria during the afternoon. Mr. Rathbun approached me and attempted to engage me in conversation. It is now

apparent that Mr. Rathbun was attempting to initiate a conversation so that he could offer a false declaration as part of Scientology's mission to attack and destroy the undersigned.

8. I also spoke with Mr. Rathbun for several minutes outside the courthouse towards the end of the day. During this brief conversation, Mr. Rathbun commented that this suit was a "grand waste of time." He sarcastically commented, "Can you afford it?" He then added that I was going to go through the same thing again. When I asked him what he meant, his response was, "You know," - an obvious reference to the ordeal of past litigation. I commented to Mr. Rathbun that they were getting beaten in all of the litigation, and that this would continue, because they were criminal and that virtue does eventually triumph in the end. I also remarked that I had seen them attempt to ruin a number of lawyers previously employed by them under similar circumstances, i.e., Barry Litt, Mike Levanus, etc. As to the comments alleged in Mr. Rathbun's declaration, they simply did not occur.

9. Earlier in the day, Mr. Rathbun approached me in the cafeteria and engaged me in conversation. He started by remarking that I was "basically a good person" and that they could see to it that I "came out of this okay." Mr. Rathbun then tried to disavow or downplay certain criminal or inappropriate activities, such as stealing medical records and break-ins. I told him to drop the PR pitch, because I was there and knew better.

10. During this same conversation, Mr. Rathbun stated that I needed to accept my responsibility for certain things. Mr. Rathbun commented that, back when the relationship deteriorated, "Everything was going south on us." I responded that if he would

look at the record he would note that I had obtained good results for them. The problem was that I insisted on exercising my professional judgment rather than blindly following their orders. When I would not go along with some of their more questionable activities or tactics, they questioned my loyalty more than the quality of legal services.

11. Mr. Rathbun also stated that I had to accept my "overts" towards them. I indicated that I knew the whole point of the exercise was to ruin me. Pursuant to "tech," they had to "dead agent" me because I had disagreed with their criminal activities and knew too much about them. Accordingly, it was necessary for them to discredit me as a source of unfavorable information.

12. With respect to the Aznaran case, Mr. Rathbun's declaration on this point is simply more fabrication or distortion. I stated to Mr. Rathbun that what they had done to the Aznarans was foul play. While they were telling the Aznarans that they wanted to settle their case, in truth Scientology was poising to file lengthy and complex summary judgment motions at a time when the Aznarans were in propria persona. Scientology not only filed hundreds of pages of moving papers when the Aznarans were in pro per, they would not even stipulate to extensions of time for responsive papers. Scientology was attempting to reap a windfall by default in the courts. As an officer of the courts I was compelled to test the issue of whether I could represent the Aznarans.

13. Mr. Rathbun's response was reminiscent of the "Fair Game" policy. He did not deny that they were playing dirty pool. Mr. Rathbun commented that since the Aznarans had sued Scientology,

they deserved whatever treatment they received from Scientology. I told Mr. Rathbun that as an officer of the court I felt a duty to see to it that their dirty tricks did not bring about a miscarriage of justice. I informed Reverend Rathbun that he, too, had a duty to see to it that everyone obtained due process, and that this included the Aznarans.

14. Mr. Rathbun remarked that I apparently expected him to "go into agreement with the universe." I told him that he did not have to go into agreement with the universe, but that he had to deal with it and should do so within the rules. I told Reverend Rathbun that despite some of his criminal attitudes, he really was basically a good person and that if he ever came to his senses he would no doubt find himself locked up in the desert for it, just like Vicki was. I told him that if such a thing should occur, to make sure he kept my telephone number in a safe place, because he would be welcome in my house as a place of refuge.

15. During my conversations with Mr. Rathbun, I mentioned the "RICO" case referred to in Paragraph 2(a) of Mr. Rathbun's declaration. I mentioned to Mr. Rathbun that I had heard that things were not going well for them in that case. I am aware that the court has entered evidentiary sanctions for Scientology's refusal to produce documents and apparent destruction of relevant evidence. It has also come to my attention that Scientology has suffered some serious set-backs recently in that case. These are matters of public record, which are monitored by myself and others. That Scientology would consider it inappropriate for me to know such things only evidences their paranoia.

16. I am interested in such developments for several

reasons. First, Scientology has recently defamed me again by asserting that I performed incompetently. I believe an examination of events would reveal that the RICO case went well for Scientology when I was working on it. Since my departure from the case, Scientology's position has substantially deteriorated.

17. With respect to Mr. Rathbun's comments at Paragraph 2(c), this is a false repetition of the old claim that I am somehow responsible for Bent Corydon's litigation. Mr. Corydon is a long-time critic of Scientology and author of L. Ron Hubbard: Messiah or Madman? I applaud Mr. Corydon for standing up to and exposing these idiots. Mr. Rathbun's declaration on this point is simply another fabrication. Further, the comments are somewhat strange in that it is my understanding that Mr. Corydon has recently settled his litigation with Scientology.

18. Contrary to the Rathbun declaration, I have not been nor have I made representation that I have been coordinating and agitating former church members to generate adverse publicity. This again evidences their propensity to see conspiracies everywhere. I certainly did not make such a claim to Mr. Rathbun.

19. I am not in a position to make most existing adversaries of the church "go away." I did not make that claim to Mr. Rathbun. Mr. Rathbun has apparently distorted our conversation into whatever false statements he feels he needs to make in order to succeed before this court and is acting in conformity with the "Fair Game" policy previously recognized by this court in, as Scientology calls it, the Yanny I litigation, and most recently by the court of appeals in the Armstrong decision, which I will supply a copy of to this court at the time of the hearing of this matter.

"Reverend" Rathbun is a Scientologist, perceives me as an enemy, and consequently will lie, cheat, and do anything he needs to, per policy, to destroy the undersigned. I can only explain the contents of his declaration in that fashion. This court has previously dealt with his testimony and should give it as much weight now as it did then.

20. With respect to the Aznaran case in federal court, I properly reacted to what I perceived to be a crisis situation created by Scientology and previously documented to this court. I would have preferred not to have become involved. However, it was and is my professional opinion that as an officer of the court it was appropriate for me to have entered an appearance in that case and allow the appropriate "case-by-case" determination to be made in the appropriate court. In the alternative, I was faced with a possible miscarriage of justice occurring without the undersigned even testing the water as to whether there was anything I could do about it. It was and remains the right thing to have done under the rather unusual and perverted circumstances confronting me. The decision to test the issue was not taken lightly. I expected a motion to disqualify me; however, I also expected an opportunity to present my defenses to such a motion which, although unusual, are substantial. Among other things, there has been a substantial waiver of privilege by Scientology's attacks on and defamation of the undersigned. The Aznaran case is not substantially related to my previous work for Scientology. Unfortunately, Judge Ideman acted without hearing any arguments or proof on the issues of waiver and substantial relationship.

21. In many respects this is a tempest in a teapot. In

ddition to being seen with Gerald Armstrong, I filed an appearance in the Aznaran case. I sought an extension of time in which to respond to summary judgment motions first from opposing counsel and then from the court. I suggested to Mr. Quinn that they continue the summary judgment hearings until such time as the Aznarans' representation could be straightened out. Scientology declined that most reasonable suggestion. Accordingly, I filed motions to obtain extensions of time. Ultimately, the court revoked the substitution of attorney and reinstated Ford Greene as counsel of record. Presumably, Mr. Greene is responding to pending motions.

22. My appearance in the Aznaran case was so transitory that I was personally never in possession of the file. Under the circumstances, I never had an opportunity to do any work on the merits of the case. No discovery or trial preparation was done during my brief tenure as counsel of record.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed on July 31, 1991, at Los Angeles, California.

JOSEPH A. YANNY

EXHIBIT C

H LAW OFFICES
Ford Greene, Esquire
California Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

Attorney for Plaintiffs
VICKI J. AZNARAN and
RICHARD N. AZNARAN

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN,

Plaintiffs,

vs.

CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al.,

Defendants.

AND RELATED COUNTER CLAIM

No. CV-88-1786-JMI(Ex)

PLAINTIFFS' EX PARTE APPLICATION FOR AN ORDER ALLOWING PLAINTIFFS TO RESPOND TO ALL PENDING MOTIONS ON OR BEFORE AUGUST 26, 1991; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF FORD GREENE IN SUPPORT THEREOF

Plaintiffs VICKI J. AZNARAN and RICHARD N. AZNARAN (hereinafter "Plaintiffs" or "Aznarans") hereby apply to this Court, ex parte, for relief in a number of regards all of which pertain to the pending motions that have been filed by defendants over the course of the past two months.

Plaintiffs base this Ex Parte Application on the fact that at the time said motions were filed, plaintiffs either were without counsel, with counsel who was subsequently disqualified and all papers filed by him stricken, or in the process of obtaining new counsel.

The legal basis for this Ex Parte Application is Federal Rule of Civil Procedure 6 and Local Rule 7.3.2.

DATED: August 1, 1991

HUB LAW OFFICES

FORD GREENE
Attorney for Plaintiffs

DECLARATION OF FORD GREENE

FORD GREENE declares:

1. I am an attorney licensed to practice law in the Courts of the State of California, am admitted to practice before this court and am the attorney of record for Vicki J. Aznaran and Richard N. Aznaran, plaintiffs herein.

2. On June 7, 1991, I acceded to the request of plaintiffs and executed substitutions of attorney whereby both plaintiffs, *in pro per*, were substituted in my place and stead.

3. On July 1, 1991, plaintiffs jointly filed the substitutions which placed them in pro per, with additional substitutions whereby attorney Joseph A. Yanny became attorney of record.

4. On July 24, 1991, the Court vacated all of the substitutions, reinstated Ford Greene as attorney of record, and ordered that cause be shown by August 2 if plaintiffs desired to substitute counsel. Additionally, the Court ordered that all motions thereafter had to be noticed no later than August 19, 1991, and not exceed the 35 page limit.

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5. From June 19, through July 29, 1991 defendants served the following motions:

Srvc. Date	Hrg. Date	Nature of Motion	Pages of Memo	Pages of Exhibits
6/19/91	7/22/91	Summary Judgment Statute of Limitations	50 plus 22 page sep. statement	658
7/5/91	8/5/91	Summary Judgment First Amendment	98 plus 16 page sep. statement	926
7/29/91	8/19/91	Exclude expert's testimony	35	405
7/29/91	8/19/91	Sep. trial on issue of releases	16	114
7/29/91	8/19/91	To Dismiss	31 plus 6 page sup. brief	303
7/29/91	8/19/91	To Strike	11	15

6. Thus, while the Aznarans have been making efforts to find counsel possessing the requirements to try this extraordinary case, defendants have filed six motions the memoranda of which total 285 pages and the exhibits to which total 2,421 pages. This truly is an phenomenal amount of activity, particularly when the Aznarans' legal representation was, at best, unstable.

7. The first motion (for summary judgment on statute of limitations issues that is 72 pages in length) was filed shortly after the Aznarans were *in pro per*. The second motion (for summary judgment on First Amendment grounds that is 114 pages in length) was filed shortly after Yanny's interjection into the case. Without addressing the merits of any of the motions, the sheer size and timing thereof could not help but to stress plaintiffs' ability to prosecute their causes of action against defendants to the maximum.

8. On July 3, 1991, attorney Yanny on plaintiffs' behalf sought an ex parte order continuing the hearing on the statute of

itations summary judgment motion for "at least sixty (60) days." Plaintiffs' opposition thereto was to be filed and served on or before July 8.

9. On July 9, 1991, attorney Yanny on plaintiffs' behalf sought another ex parte order continuing the hearing on the First Amendment summary judgment motion. Plaintiffs' opposition thereto was to be field and served on or before July 22.

10. I first became aware of the Court's Order reinstating me as attorney of record on July 26. At that time, I was aware that plaintiffs were in contact with Mr. Elstead with whom I understood plaintiffs to be in negotiations to act as counsel in this case. (The Court is respectfully requested to consider the Declarations of Ford Greene, John Clifton Elstead, Vicki J. Aznaran and Richard . Aznaran filed in conjunction with the Association of Counsel filed concurrently herewith.)

11. On July 31, 1991, I met with Mr. Elstead and, with plaintiffs' concurrence, we determined not to substitute me out and Mr. Elstead in as attorney of record, but to associate him as trial counsel. On the same day I obtained the case file from Mr. Elstead. The file had been out of my possession ever since I had Federal Expressed it to Los Angeles on June 27. Also on that date I spoke with Tammy, the Court's clerk who advised me that the Court had stricken all papers filed by Joseph A. Yanny as being moot in light of the Court having vacated the Yanny substitution. Thus, the Court would not be ruling on the ex parte applications, submitted by Mr. Yanny, regarding defendants' two pending summary judgment motions. Regretably, at that point, the time within which plaintiffs' oppositions thereto should had been filed had expired.

C- 26

12. Prior to the exclusion of Yanny from the case, plaintiffs' *ex parte* requests for continuances of the hearing dates regarding the summary judgment motions were submitted in a timely fashion. With the vacation of the Yanny substitution having occurred after the date for opposition had passed, however, in consequence the Aznarans now stand in default.

13. With respect to the motions noticed for August 19, the oppositions thereto shall be served and filed on or before Monday, August 5, 1991.

14. There is no possible way that I can oppose the pending motions by August 5, not to mention the motions for summary judgment.

15. Based on the circumstances described above, plaintiffs respectfully request that they be allowed to and including August 26, 1991, to file their oppositions to all pending motions. While plaintiffs in all practicality would need more time to effectively oppose the motions, plaintiffs recognize that to ask for anything more would intrude way too far into the Court's capacity to consider the motions within the limit set by the September 16 Pre-Trial Conference and the October 15 Trial Date.

16. On this date I spoke with Laurie Bartilson, attorney for defendants, who advised me that defendants oppose the instant Ex Parte Application. Additionally, I left word with Julie, the secretary for attorney John Quinn, and advised her that I would be seeking relief through the instant application.

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Under penalty of perjury pursuant to the laws of the State of California I hereby declare that the foregoing is true and correct according to my first-hand knowledge, except those matters stated to be on information and belief, and as to those matters, I believe them to be true.

Executed on August 1, 1991, at San Anselmo, California

FORD GREENE

MEMORANDUM OF POINTS AND AUTHORITIES

As set forth above, extraordinary circumstances exist which have resulted in the Aznarans being in default as to two summary judgment motions, and at the threshhold of default concerning the remaining four motions. Thus, the Aznarans' failure to file papers in opposition to the two pending summary judgment motions "may be deemed by the Court [as] consent to the granting of the motion." Local Rule 7.9.

This Court has the authority pursuant to the Federal Rules or the Local Rules to enlarge time before or after the date by which opposition papers are to have been filed. F.R.Civ.P. 6, Local Rule 7.3.2.

Plaintiffs thus respectfully request, based upon the procedural history of this case over the course of the past two months, the Court grant their application and issue its order allowing plaintiffs to file opposing papers to all outstanding motion provded that such papers be filed and served on or before August 26, 1991.

TED: August 1, 1991

HUB LAW OFFICES

FORD GREENE
Attorney for Plaintiffs

'abs Co. 1-800-322-3022

Form EXS-B

EXHIBIT D

DECLARATION OF SAM BROWN

I, Sam Brown, hereby declare:

1. I am over the age of eighteen. I am a licensed private investigator in northern California. I run an investigation firm called Sam Brown and Associates. I have personal knowledge of the facts set forth below, except as stated to be on information and belief, and as to those facts, I believe them to be true. If called upon to do so, I could and would competently testify thereto.

I ran a surveillance outside the law offices of Ford Greene at 711 Sir Francis Drake Boulevard, San Anselmo, California during the period from August 15 through August 21, 1991. I have been informed and believe that Greene is the attorney for plaintiffs in the case of Aznaran v. Church of Scientology of California, et al., Case No. CV 88-1786 JMI (Ex) in Los Angeles Federal court.

3. During the course of this surveillance, a white male having long brown hair tied back in a pony tail, was observed entering and leaving the Greene law offices each day from the 15th through the 21st. This man spent most of the day at the offices. He was also observed bringing in boxes from Kinko's copy center.

4. This individual was videotaped entering and leaving the building and standing in front of it on

several different days. Some portions of the video have been printed as still photographs and are attached hereto as exhibit A.

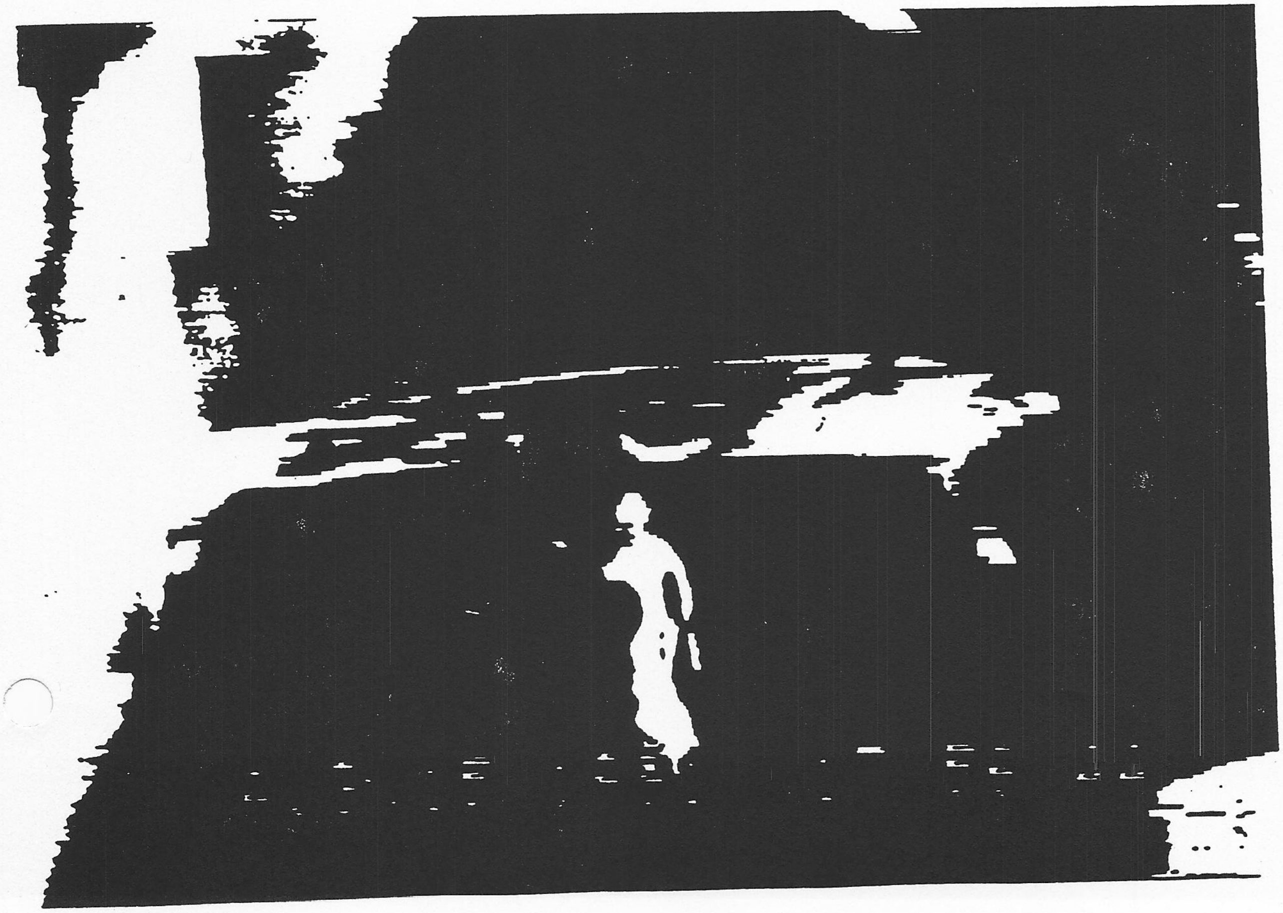
5. I was informed by the law firm which represents some of the defendants in the Aznaran case that the man in these photographs is an individual known as Gerald Armstrong.

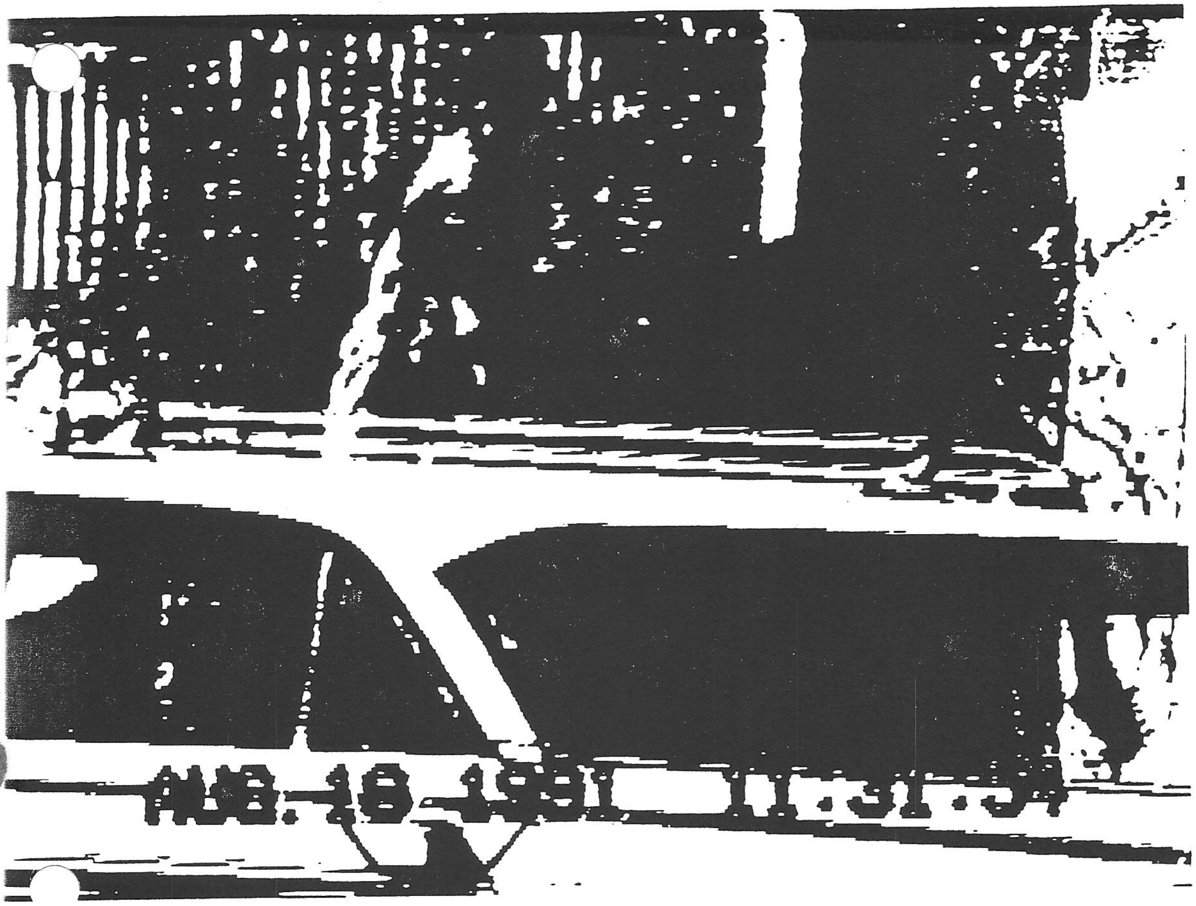
I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California the 26th day of August 1991.

Sam Brown

SAM BROWN

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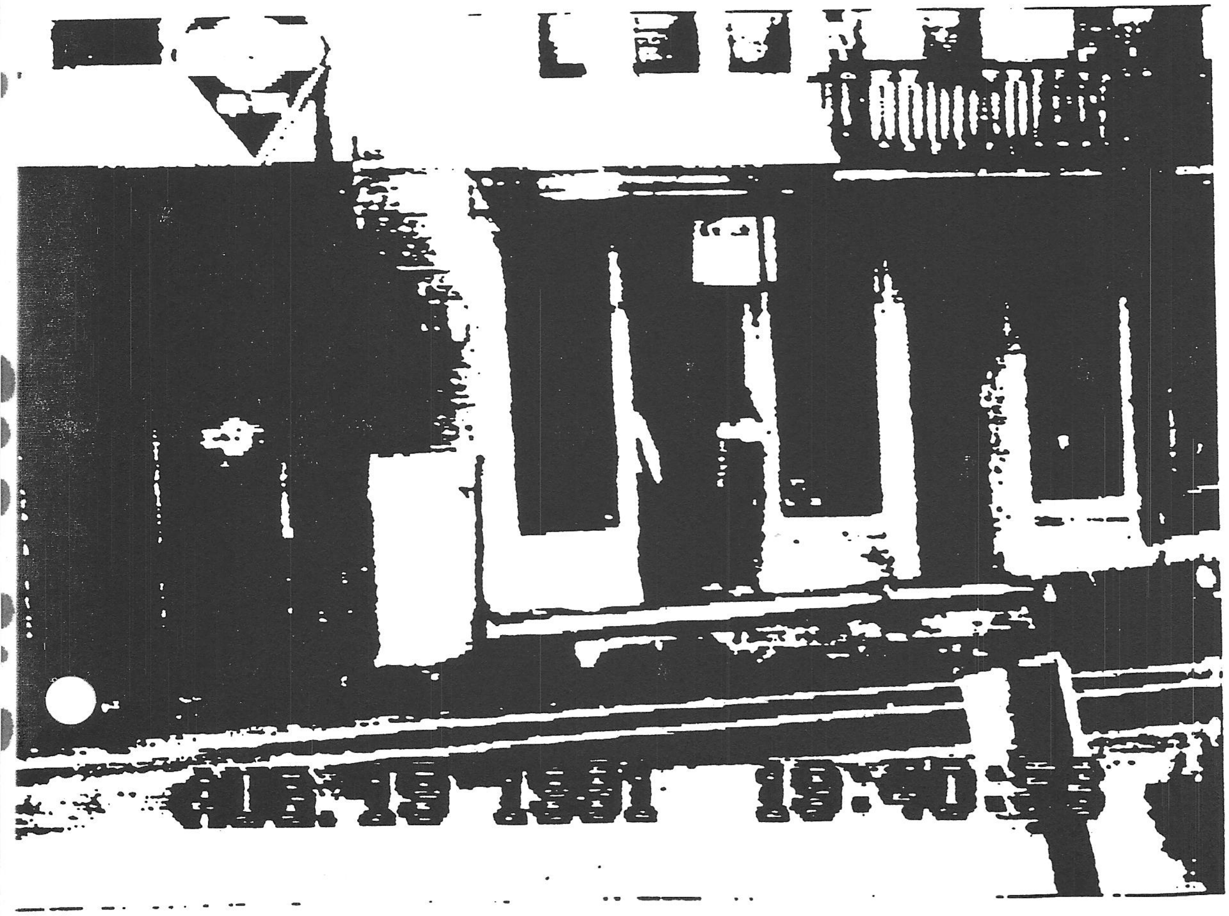
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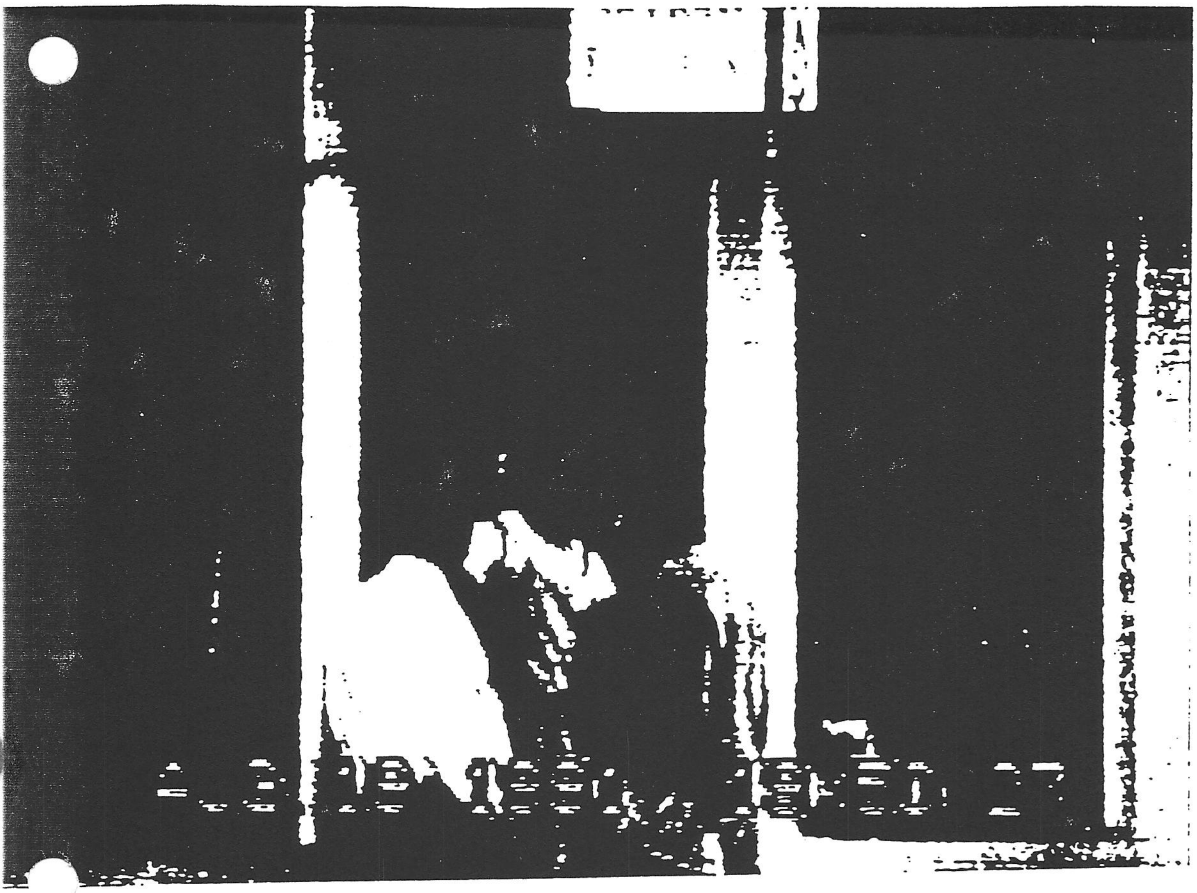

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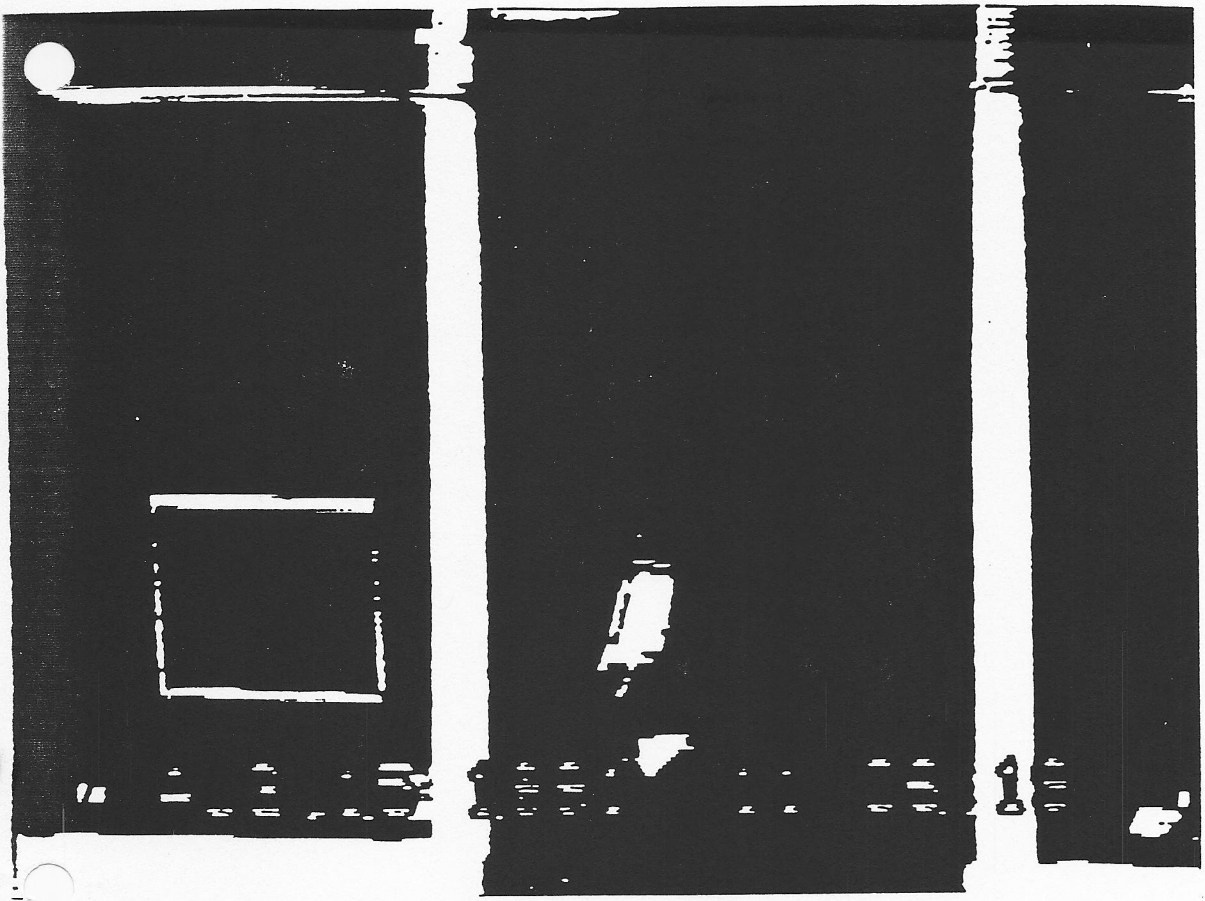

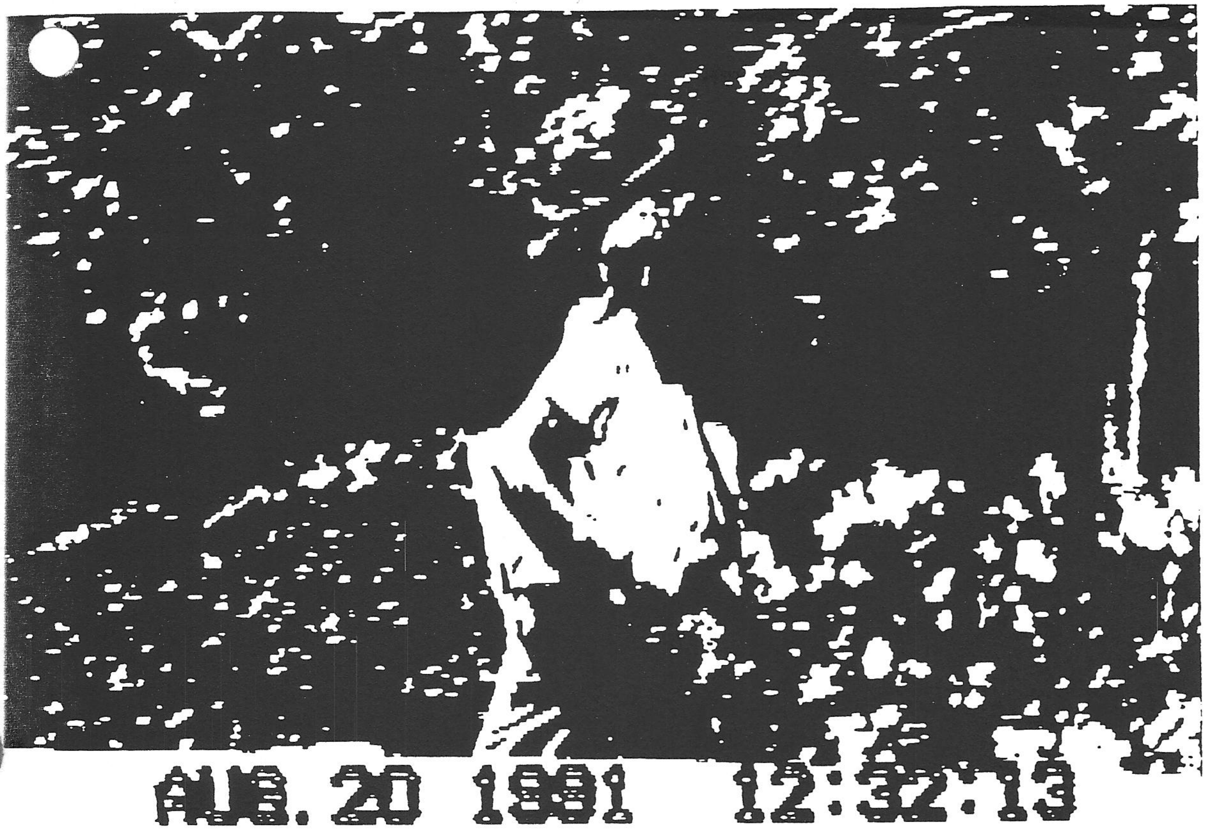
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Form EXS-B

ıTabs™ • Legal Tabs Co. 1-800-322-3022

EXHIBIT E

DECLARATION OF LYNN R. FARNY

I, Lynn R. Farny, do declare:

1. I am over 18 years of age and make this declaration of my own personal knowledge and for those matters stated upon information and belief, I believe them to be true and accurate. If called as a witness to testify as to the matters herein, I could and would do so competently.

2. I am corporate Secretary of the Church of Scientology International ("CSI"), a California religious corporation.

3. I have reviewed the photographs which are attached to the declarations of Sam Brown and Thorn Smith, Exhibits D and I to the Supplemental Memorandum in Support of Motion to Dismiss the Complaint. I recognize the individual in the photographs attached to the Smith declaration as John Koresko and the individual in the photographs attached to the Brown declaration as Gerald Armstrong.

4. I am well familiar with Gerald Armstrong, as I have worked in the legal department of CSI since 1984, and prior to that in the legal department of Church of Scientology of California ("CSC"). I have actively followed the events occurring during that time in lawsuit against Gerald Armstrong by CSC regarding his theft of private documents belonging to the Founder of the Scientology religion.

5. I am also well familiar with John Koresko, who was office manager and later a paralegal for Joseph A. Yanny, CSI's former attorney, during the time that Yanny represented

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CSI and afterwards, when CSI and CSC sued Yanny for his breaches of fiduciary duties.

6. That Armstrong is amenable to the kind of covert representation in which Yanny is engaging in this case is highlighted by his recorded remarks made in November 1984. At that time, Armstrong was plotting against the Scientology Churches and seeking out staff members in the Church who would be willing to assist him in overthrowing Church leadership. The Church obtained information about Armstrong's plans and, through a police-sanctioned investigation, provided Armstrong with the "defectors" he sought. On November 30, 1984, Armstrong met with one Michael Rinder, an individual whom Armstrong thought to be one of his "agents" (but who in reality was loyal to the Church). In the conversation, recorded with written permission from law enforcement, Armstrong stated the following in response to questions by Mr. Rinder as to whether they had to have actual evidence of wrongdoing to make allegations against the Church leadership:

> ARMSTRONG: They can allege it. They can allege it. They don't even have -- they can allege it.
>
> RINDER: So they don't even have to -- like -- they don't have to have the document sitting in front of them and then --
>
> ARMSTRONG: Fucking say the organization destroys the documents.
>
> * * *
>
> Where are the -- we don't have to prove a goddamn thing. We don't have to prove shit; we just have

to allege it.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Los Angeles, California the 26th day of August 1991.

LYNN R. FARNY

DECLARATION OF LAURIE J. BARTILSON

I, LAURIE J. BARTILSON, hereby declare and state:

1. I am co-counsel of record for plaintiffs in the case of Aznaran v. Church of Scientology of California, et al., Case No. CV 88-1786 JMI(Ex). I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would competently testify thereto.

2. On August 19, 1991, I called the offices of Ford Greene, counsel for plaintiffs in this case, to arrange to have a courier pick up several oppositions which plaintiffs were due to file that day.

3. The person who answered the telephone in Mr. Greene's office identified himself as Gerald Armstrong. When queried, Armstrong stated that he was at Greene's office "helping out." I recognized that Armstrong was a person who has been a long-term litigation adversary of my client, Church of Scientology of California, having been sued for conversion of documents belonging to the Church's Founder.

4. In addition, in a case pending in Los Angeles Superior Court, Religious Technology Center, et al. v. Yanny, Case No. BC 033035. Armstrong and Joseph Yanny have both filed declarations under penalty of perjury that Armstrong was hired by Yanny as a paralegal to work on this case. (Ex. B, Declaration of Joseph A Yanny, July 31, 1991, para. 4; Ex. H, Declaration of Gerald Armstrong, July 19, 1991, para. 4). Even though Yanny protested its issuance, partially on the ground that Armstrong was his paralegal in this case (Ex. G, Transcript of August 6, 1991, at 25), Yanny was preliminarily

enjoined in that case from directly or indirectly acting as counsel against defendants on behalf of either the Aznarans or Gerald Armstrong.

I declare under the penalties of perjury under the laws of California and the United States of America that the foregoing is true and correct.

Executed this __ day of August at Los Angeles, California.

LAURIE J. BARTILSON

EXHIBIT 6

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 41 HON. RAYMOND CARDENAS, JUDGE

RELIGIOUS TECHNOLOGY CENTER, A CALIFORNIA NON-PROFIT RELIGIOUS CORPORATION; CHURCH OF SCIENTOLOGY INTERNATIONAL, A CALIFORNIA NON-PROFIT RELIGIOUS CORPORATION; AND CHURCH OF SCIENTOLOGY OF CALIFORNIA, A CALIFORNIA NON-PROFIT RELIGIOUS CORPORATION,

PLAINTIFFS,

VS.

JOSEPH A. YANNY, AN INDIVIDUAL; JOSEPH A. YANNY, A PROFESSIONAL LAW CORPORATION; AND DOES 1 THROUGH 25, INCLUSIVE,

DEFENDANTS.

SUPERIOR COURT
CASE NO. BC 033035

REPORTER'S TRANSCRIPT

AUGUST 6, 1991

APPEARANCES:

(AS NOTED ON NEXT PAGE.)

COPY

LINDA STALEY, CSR NO. 3359
OFFICIAL REPORTER

APPEARANCES:

FOR PLAINTIFF CHURCH OF SCIENTOLOGY:	QUINN, KULLY & MORROW BY: JOHN J. QUINN 520 SOUTH GRAND AVENUE 8TH FLOOR LOS ANGELES, CALIFORNIA (213) 622-0300
FOR PLAINTIFF RELIGIOUS TECHNOLOGY CENTER:	WILLIAM T. DRESCHER 23679 CALABASAS ROAD SUITE 338 CALABASAS, CALIFORNIA 91302 (818) 591-0039
FOR DEFENDANT JOSEPH A. YANNY, INDIVIDUALLY:	CUMMINGS & WHITE BY: BARRY VAN SICKLE 865 SOUTH FIGUEROA STREET 24TH FLOOR LOS ANGELES, CALIFORNIA 90017 (213) 614-1000
FOR DEFENDANT JOSEPH A. YANNY, A PROFESSIONAL CORPORATION:	JOSEPH A. YANNY 1925 CENTURY PARK EAST SUITE 1260 LOS ANGELES, CALIFORNIA 90067 (213) 551-2966

LOS ANGELES, CALIFORNIA TUESDAY, 8-6-91 ≠ 9:32 A.M.
DEPT. 41 HON. RAYMOND CARDENAS, JUDGE
APPEARANCES: (AS NOTED ON TITLE PAGE.)

- - O - -

THE COURT: RELIGIOUS TECHNOLOGY CENTER VERSUS YANNY.

THE MATTER IS HERE FOR HEARING ON THE QUESTION OF THE PRELIMINARY INJUNCTION.

THE COURT HAS HERETOFORE SIGNED A TEMPORARY RESTRAINING ORDER, JULY 31ST, AND AT THIS TIME, I WILL HAVE THE PARTIES IDENTIFY THEMSELVES AND THEIR APPEARANCE.

MR. DRESCHER: GOOD MORNING, YOUR HONOR.

WILLIAM DRESCHER ON BEHALF OF THE PLAINTIFF RELIGIOUS TECHNOLOGY CORPORATION.

MR. QUINN: JOHN QUINN ON BEHALF OF CHURCH OF SCIENTOLOGY INTERNATIONAL.

MR. VAN SICKLE: BARRY VAN SICKLE ON BEHALF OF JOSEPH A. YANNY, AN INDIVIDUAL.

MR. YANNY: AND JOSEPH A. YANNY ON BEHALF OF JOSEPH A. YANNY, A PROFESSIONAL CORPORATION, YOUR HONOR.

THE COURT: THE COURT HAS BEFORE IT A QUESTION OF WHAT, IF ANY -- WHETHER IT WILL ISSUE A PRELIMINARY INJUNCTION OR NOT IN LIGHT OF CASE NO. BC 033035.

THE COURT HAS ISSUED THE TRO AS A STOPGAP MEASURE. I'LL TELL YOU AT THE OUTSET THAT I THINK THAT I'VE SIGNED IT FOR A TRO, BUT THAT IT'S TOO BROAD IN

NATURE, SO WE GET BACK TO THE FIRST ISSUE, HOWEVER, IS WHETHER OR NOT ANY PRELIMINARY INJUNCTION SHOULD ISSUE.

TWO THINGS OCCUR HERE. THERE ARE TWO PARTIES, NAMELY, THE QUESTION OF MR. YANNY REPRESENTING THE AZNARANS AND MR. YANNY REPRESENTING MR. ARMSTRONG.

I MIGHT POINT OUT THAT IN YANNY I, AS IT'S BEEN REFERRED TO -- AND YOU ALL KNOW THAT I'M REFERRING TO THE OTHER CASE THAT WAS PRESENTED HERE IN COURT -- I'M NOT GOING TO REPEAT IT, I'LL JUST REFER TO IT AS YANNY I -- YANNY I WAS, AMONG OTHER THINGS, A REQUEST BY PLAINTIFFS TO PREVENT MR. YANNY FROM DISCLOSING SECRETS OR CONFIDENCES THAT HE RECEIVED TO OTHERS, AND THE COURT RULED THAT THE PLAINTIFF DID NOT PROVE ITS CASE, THAT IS, TO IDENTIFY THE SECRETS OR THE CONFIDENCES THAT WERE BEING DISCLOSED, AND THE COURT RULED THAT IT DID NOT, MEANING THE PLAINTIFFS, DID NOT PROVE DAMAGE WITH RESPECT TO THAT.

THE PICTURE IS NOW CHANGED, AND PART OF THE COURT'S OPINION IN YANNY I, THE COURT ALLUDED TO THE FACT THAT MR. YANNY HAD SHOWN A PROPENSITY TO PERHAPS BE ON THE BORDERLINE OF A BREACH OF A DUTY TO A FORMER CLIENT IN THE OTHER CASE.

NOW, WHAT HAS TRANSPIRED IS THAT, FACTUALLY, MR. YANNY REPRESENTED THE CHURCH, OR THE PLAINTIFFS, FOR A PERIOD OF YEARS, AND THAT'S ADMITTED, AND AT THAT TIME, MS. AZNARAN --

AND I FORGET HER HUSBAND'S NAME.

MR. YANNY: RICHARD.

THE COURT: -- RICHARD, WERE PART OF THE CHURCH, OR

THE PLAINTIFFS, AND SO NOW WE HAVE A SITUATION WHERE MR. YANNY HAS ACTUALLY APPEARED FOR THE AZNARANS IN THE FEDERAL COURT AGAINST THE PLAINTIFFS, WHICH BRINGS INTO PLAY WHETHER OR NOT -- WHETHER THERE IS A REMEDY WHERE A LAWYER IS REPRESENTING SOMEONE AGAINST A FORMER CLIENT, AND THE QUESTION IS WHETHER OR NOT THAT'S IN VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT, RULE 33-310(D), AND ALSO RULES OF PROFESSIONAL CONDUCT 6068, SUBDIVISIOIN (E).

THE PICTURE IS QUITE DIFFERENT THAN IN THE FORMER CASE, BECAUSE, HERE, WE HAVE NO NEED FOR THE PLAINTIFFS TO POINT OUT WHAT SPECIFIC SECRETS OR CONFIDENCES ARE BEING DISCLOSED, BUT RATHER, IT'S PRESUMED THAT THERE'S AN ADVERSE REPRESENTATION, AND THE ONLY ISSUE THAT WE HAVE, AT LEAST RIGHT NOW, WOULD BE WHETHER THERE'S A SUBSTANTIAL RELATIONSHIP BETWEEN WHAT YANNY DID, OR FOR THE PLAINTIFFS, WHAT INTERESTS HE REPRESENTED, VERSUS WHAT HIS INTERESTS ARE NOW AND WHAT INTERESTS ARE BEING REPRESENTED IN THE AZNARAN CASE.

THE ARMSTRONG CASE IS SOMEWHAT DIFFERENT, ALTHOUGH I THINK IT'S UNDISPUTED THAT YANNY REPRESENTED THE PLAINTIFFS AGAINST ARMSTRONG AT SOMETIME -- AND MAYBE THAT'S A WRONG ASSUMPTION -- MR. YANNY'S SHAKING HIS HEAD -- BUT MR. YANNY, I BELIEVE, REPRESENTED THE PLAINTIFFS IN MANY RESPECTS, AND IN PARTICULAR, I THINK BROUGHT OR WAS IN CHARGE OF LEGAL ACTION PRESERVING THE COPYRIGHT INTERESTS OF THE PLAINTIFFS AND OTHER INTERESTS.

SO THE QUESTION HERE IS WHETHER OR NOT A RESTRAINING ORDER SHOULD BE MADE TO PRECLUDE MR. YANNY FROM

REPRESENTING ARMSTRONG, PRESUMPTIVELY, IF HE IS. THAT'S A QUESTION, I THINK, MR. YANNY DENIES, BUT EVEN IF HE WAS, IS THERE A MATERIAL OR SUBSTANTIAL RELATIONSHIP BETWEEN THE INTERESTS THAT MR. YANNY HAD IN PROTECTING FOR THE PLAINTIFFS AND THOSE THAT HE PURSUES OR IS ALLEGED TO BE PURSUING FOR MR. ARMSTRONG?

IT'S A LONG-WINDED WAY OF SUMMARIZING WHERE WE'RE AT, AND TO BEGIN WITH, MR. VAN SICKLE: IN LIGHT OF MR. YANNY'S ADMITTED REPRESENTATION OF AZNARANS IN FEDERAL COURT, WHY ISN'T THERE A VIOLATION OF THE RULES OF PROFESSIONAL CONDUCT THAT SHOULD BE RESTRAINED?

MR. VAN SICKLE: WELL, SEVERAL REASONS.

ONE, AS THE COURT HAS RECOGNIZED, IF HE REPRESENTS THE AZNARANS IN FEDERAL COURT, THEN THE APPROPRIATE REMEDY IS FOR THEM TO GO IN AND DISQUALIFY THEM -- MR. YANNY.

NOW, DISQUALIFICATION IS NOT PUNITIVE IN NATURE, SO, THEREFORE, WHEN YOU'RE INVOLVED IN A DISQUALIFICATION, THE BURDEN'S A LITTLE BIT DIFFERENT. THE PRESUMPTIONS ARE DIFFERENT. THE PRESUMPTION OF, SAY, DISCLOSING SECRETS, VARIOUS PRESUMPTIONS WORK IN THEIR FAVOR IN A DISQUALIFICATION MOTION.

BUT THOSE SAME PRESUMPTIONS DO NOT OPERATE IN A PRELIMINARY INJUNCTION, AND THAT MAKES SENSE. BECAUSE WHEN YOU'RE GOING INTO COURT AND ASKING FOR DISQUALIFICATION ON A CASE-BY-CASE BASIS, YOU'RE GOING THE WAY YOU'RE SUPPOSED TO GO.

YOU COME INTO COURT ON A PRELIMINARY

CETERA, NOTHING TO DO WITH ADVERSE REPRESENTATION OF SCIENTOLOGY. THEY DO NOT HAVE THE RIGHT --

THE COURT: MR. YANNY, I STATED THAT THE TRO WAS TOO BROAD IN THAT IT IS THE COURT'S INTENT NOT TO PRECLUDE ASSOCIATION, DISCUSSION, AND SO FORTH, AND I THOUGHT THAT WOULD SEND THE MESSAGE THAT IF THERE WAS AN ORDER, IT WOULD BE A LOT MORE NARROW THAN THE TRO THAT WAS SIGNED.

MR. YANNY: YOUR HONOR, BUT BASED ON THE STRENGTH OF WHAT THEY'VE SHOWN; NOTHING?

AND WHAT YOU'RE GOING TO DO BY GIVING THESE, THE MOST LITIGIOUS PEOPLE IN THE CITY OF LOS ANGELES, MAYBE THE STATE OF CALIFORNIA, AND MAYBE THE UNITED STATES, YOU'RE GOING TO GIVE THEM AN ORDER BY WHICH THEY ARE THEN GOING TO HARASS EVERY ONE OF MY EMPLOYEES LIKE YOU SAW THEM DO BEFORE, EVERY ONE OF MY CLIENTS, LIKE YOU SAW THEM DO BEFORE.

OKAY. AND THAT, BASED ON THE STRENGTH OF WHAT THEY SHOWED, YOU KNOW, IT IS -- I HATE TO SAY THIS -- THAT IS INEQUITABLE -- THAT IS INEQUITABLE -- AND ALL OF THIS BECAUSE I DID ONE THING; I HIRED GERRY ARMSTRONG AS A PARALEGAL TO HELP ME ON THE AZNARAN CASE?

THE COURT: NO. ALL BECAUSE --

MR. YANNY: I TOLD HIM ABOUT COPYRIGHT NOTICES AND I MADE AN APPEARANCE IN A FEDERAL CASE AND THAT THE JUDGE DISQUALIFIED ME.

I DON'T THINK AN ORDER IS APPROPRIATE. THIS CASE SHOULD HAVE BEEN THROWN OUT WHEN YOU SAW THE COMPLAINT.

EXHIBIT H

Declaration of Gerald Armstrong

I, Gerald Armstrong, declare:

1. I have been advised by ttorney Joseph A. Yanny that he has been sued by one or more Scientology entities, hereinafter referred to as "the organization," for inducing me to breach a settlement agreement I entered into with the organization in December 1986. I am making this declaration to show that this allegation is in every respect untrue.

2. I received a telephone call from Mr. Yanny to my answering machine on or about July 10, 1991. He left a message which simply said, "I need your help." I

called him back at which time he reiterated his request for my help and explained that because of organization machinations (which have been detailed in other declarations by other parties), Rick and Vicki Aznaran, plaintiffs and counter-defendants against the organization had been induced to fire their attorney, Ford Greene, and that Mr. Yanny had come into the case to ensure they had legal representation. Mr. Yanny also expressed during this conversation some personal concerns, which will remain private and confidential between Mr. Yanny and me.

3. I told Mr. Yanny at that time that I would help and that I would travel to Los Angeles on July 12. ~~O~~ I asked him for five hundred dollars to cover my expenses, and told him he could consider it as purchase of stock in The Gerald Armstrong Corporation (TGAC). I also counseled Mr. Yanny at that time regarding his personal spiritual difficulties. (TGAC is a California Corporation in which, although it bears my name and I am its active officer,

I own no stock.)

4. I did travel to Los Angeles, did stay at Mr. Yanny's home, did work in his office on July 15 and 16, and did write and execute a declaration on July 16 giving my knowledge of the effect of the December 1986 group settlement agreements on the ability of the Aznarans and other individuals victimized by the organization to obtain proper legal representation. I also discussed with Mr. Yanny literary and

artistic matters, areas of the law, as a copyright and trademark attorney, in which he has expertise. The majority of my time with Mr. Yanny concerned spiritual matters, an area in which I have expertise.

5. I refer this Court to my declarations of March 15, 1990 and December 25, 1990, and the exhibits thereto. These declarations detail the circumstances at the time of the December 1986 settlement and the many instances subsequently

when I was attacked or threatened by the organization in violation of the settlement agreement. these declarations make it very clear that I consider I have a right to counter the organization's attacks, to speak out against its policy of "fair game" and assaults on the basic rights of individuals, and to assist those whom I would depend on for protection against the organization's legal and extra-legal might and antisocial acts. It is therefore the organization itself which induced me. if I was induced by any human agency to do anything which the organization might consider a breach of the settlement agreement.

6. But more than a desire to protect myself or right the organization's unjust acts towards me, however, I helped Mr. Yanny for the simple reason that he asked. I will do the same for anyone. The organization is aware of this fact because it received my letter of

June 21, 1991, a copy of which will accompany this declaration as Exhibit 1, and acknowledged the letter's receipt in their letter of July 3, 1991, a copy of which will accompany this declaration as Exhibit 2. It is not only the right of all men to respond to requests for help, it is our essence. If I was induced, therefore, to help Mr. Jonny, or anyone else, it was our Creator Who induced me. Mr. Jonny, unlike the organization, was not aware of my dedication to helping my fellow humans, did not know of my June

21, 1991 letter, so I acted in innocence.

7. I do not ask for or expect a fee for my help, although generally I do not refuse whatever is given me. I know that I am sustained completely by the Great Coordinator Who sends to me whomever He wants me to help. I therefore cannot be induced by money or whatever anyone can offer me.

I declare under the pain and penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19th day of July at New York, New York.

G.

Gerald Armstrong

DECLARATION OF THORN SMITH

I, Thorn Smith, hereby declare:

1. I am over the age of eighteen. I am a licensed attorney in the state of California. I have personal knowledge of the facts set forth below, except as stated on information and belief, and as to those I believe them to be true. If called upon to do so, I could and would competently testify thereto.

2. On Saturday, August 3, 1991, I conducted a surveillance at the law offices of Ford Greene, the attorney for the plaintiffs in a federal case pending in Los Angeles, Aznaran v. Church of Scientology of California Case No. 88-1786 JMI (Ex). The address of his office is 711 Sir Francis Drake Boulevard, San Anselmo, California, which is a storefront in a two-story building.

3. During the course of that morning, I observed a white male, who was driving a grey Cadillac, having a California tag reading "I MENSA," outside those law offices.

4. The man I saw took various boxes from the trunk of his car and brought them into Ford Greene's building, along with another unidentified white male.

5. I have subsequently learned from counsel for the defendants in the Aznaran case that their client identified the owner of the grey Cadillac as being John Koresko.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California the 26th day of August 1991.

Thorn Smith
THORN SMITH

Legal Tabs Co. 1-800-322-3022

Form EXS-8

BIT A

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EXHIBIT J

DECLARATION OF EDWARD AUSTIN

I, Edward Austin, hereby declare:

1. I am over the age of eighteen. I am a licensed private investigator in northern California. I have personal knowledge of the facts set forth below, except as stated on information and belief, and as to those I believe them to be true. If called upon to do so, I could and would competently testify thereto.

2. On Saturday, August 3, 1991, I conducted a surveillance at the law offices of Ford Greene, the attorney for the plaintiffs in a federal case pending in Los Angeles, Aznaran v. Church of Scientology of California, Case No. CV 88-1786 JMI (Ex). The address of his office is 711 Sir Francis Drake Boulevard, San Anselmo, California, which is a storefront in a two-story building.

3. During the course of that day, I observed an old, grey Cadillac, having a California tag reading "I MENSA," pull up outside of the office at 5:14 p.m. I saw a dark haired man get out of the car and go into Ford Greene's office. The Cadillac remained parked outside Mr. Greene's office until 10:25 p.m.

4. I have subsequently been informed by counsel for the defendants in the Aznaran litigation that their client identified the grey Cadillac as belonging to John Koresko.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Marin County, California the 26 day of August 1991.

EDWARD AUSTIN

PROOF OF SERVICE

TATE OF CALIFORNIA)
) ss.
OUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of alifornia. I am over the age of eighteen (18) years and not a arty to the within action. My business address is 6255 Sunset lvd., Suite 2000, Hollywood, California 90028.

On August 26, 1991, I caused to be served the foregoing ocument described as SUPPLEMENTAL MEMORANDUM IN SUPPORT OF EFENDANTS' MOTION TO DISMISS COMPLAINT WITH PREJUDICE; ECLARATIONS OF SAM BROWN, THORN SMITH, EDWARD AUSTIN, LYNN R. FARNY AND LAURIE J. BARTILSON on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Hollywood, California, addressed as follows:

Ford Greene
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

If hand service is indicated on the above list, I caused the above-referenced paper to be served by hand.

Executed on August 26, 1991 at Hollywood, California.

6759

Earle C. Cooley
COOLEY, MANION, MOORE & JONES, P.C.
21 Custom House Street
Boston, MA 02110
(617) 737-3100

William T. Drescher
23679 Calabasas Road, Suite 338
Calabasas, CA 91302
(818) 591-0039

Attorneys for Defendants
CHURCH OF SPIRITUAL TECHNOLOGY and
RELIGIOUS TECHNOLOGY CENTER

Eric M. Lieberman
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.
740 Broadway at Astor Place
New York, NY 10003-9518
(212) 254-1111

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AUG 29 1991
HUB LAW OFFICES

John J. Quinn
QUINN, KULLY AND MORROW
520 S. Grand Avenue, 8th Floor
Los Angeles, CA 90071
(213) 622-0300

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Los Angeles, CA 90028
(213) 661-4030

Attorneys for Defendant
CHURCH OF SCIENTOLOGY
INTERNATIONAL

Michael Lee Hertzberg
740 Broadway, Fifth Floor
New York, NY 10003
(212) 982-9870

James H. Berry, Jr.
BERRY & CAHALAN
2049 Century Park East
Suite 2750
Los Angeles, CA 90067
(213) 284-2126

Attorneys for Defendant
AUTHOR SERVICES, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN, Plaintiffs, vs. CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., Defendants.	CASE No. CV 88-1786 JMI(Ex) REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BASED ON THE STATUTE OF LIMITATIONS DATE: September 9, 1991 TIME: 10:00 a.m. COURTROOM: Hon. James M. Ideman
AND RELATED COUNTERCLAIMS.	

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PRELIMINARY STATEMENT

It is time for the Court to put an end to the expensive, time-consuming force that this case is.

Defendants have filed a motion for summary judgment which sets forth ample evidence that everyone of plaintiffs Vicki and Richard Aznaran's alleged claims for relief is barred by the applicable statute of limitations. In response, the Aznarans concede that Vicki's false imprisonment claim is time-barred because she left the condition claimed to have been the wrongful confinement on March 31, 1987, more than one year before this suit was filed. [Plaintiffs' Opposition at 16 (hereinafter "Pl. Opp."); see Defendants' Memorandum at 9-13 (hereinafter "Def. Mem."); Defendants' Uncontroverted Fact No. 4]. The Aznarans do not even attempt to controvert the undisputed facts that demonstrate that the events that give rise to their other claims occurred well outside the limitations period [Def. Mem. at 16-19 and Uncontroverted Facts Nos. 5-7 (intentional and negligent infliction of emotional distress); Def. Mem. at 21-24 and Uncontroverted Facts Nos 7-9 (loss of consortium); Def. Mem at 27-35 and Uncontroverted Facts Nos. 10, 12-17 (fraud); Def. Mem. at 37-38 and Uncontroverted Fact No. 6 (constructive fraud); Def. Mem. at 44-46 and Uncontroverted Fact No. 10 (breach of contract); Def. Mem. at 44-46 and Uncontroverted Facts Nos. 10, 22 (restitution); Def. Mem. at 46-49 and Uncontroverted Fact No. 23 (invasion of privacy); Def. Mem. at 49-50 and Uncontroverted Fact No. 24 (statutory minimum wage claim).]

With all of that established and uncontroverted, summary judgment on all of the Aznarans' claims is mandated, and this 3 1/2 year drain on everyone's resources will reach its proper conclusion: judgment for all defendants on all counts.

Confronted with that insurmountable hurdle, the Aznarans, their present counsel, and Joseph A. Yanny, defendants' former counsel and the Aznarans' de facto counsel, responded predictably. They once again change and contradict their earlier sworn testimony to "support" never-before alleged legal theories conjured up to meet the exigencies of the moment.

On February 20, 1991, defendants filed a motion asking the Court to order the Aznarans and their counsel not to indulge further in their habitual changing of their sworn versions of the facts and the legal theories of their case. That motion was necessitated by the Aznarans continuously supplying declarations that were at odds with their earlier sworn testimony and because their counsel changed their legal theories each time he was called upon to articulate them, to the point that even their legal theories were in conflict. That motion remains under submission. Now, faced with meritorious motions for summary judgment, the Aznarans have once again changed the facts, contradicted their earlier testimony, created an entirely new story concerning their case and again redefined their theories.

The Aznarans' and their counsel's repositioning of the facts and the legal theories they espouse is hardly surprising for two reasons. First, as set forth in defendants' February 20, 1991 motion papers on this point, they have done so throughout this entire litigation. Second, and even more telling, the utter disregard of the truth that the Aznarans have made the trademark of their litigation effort, bears the unmistakable signature of Gerald Armstrong, whose theory of litigating against Churches of Scientology, as captured on videotape in 1984, is not to worry about what the facts really are, but instead to choose a state of "facts" that should survive a challenge by the Church and "just allege it." [Declaration of Earle C. Cooley, Ex. F].

It is clear that Armstrong's influence and philosophy permeates the Aznarans' oppositions. Armstrong was in the office of the Aznarans' counsel, Ford Greene, for most of the week in which the Aznarans' opposition were created. [Ex. E, Declaration of Sam Brown, ¶ 3]. On August 19, 1991, Armstrong admitted to one of defendants' counsel that he was at Greene's office "helping out." [Ex. B, Declaration of Laurie J. Bartilson.] Even more disturbingly to a Court that disqualified Barry Van Sickle as counsel for the Aznarans because his presence represented an improper "extension of Yanny" into these proceedings and disqualified Yanny himself because his presence was "highly prejudicial" to defendants, Armstrong is a paralegal who was hired by Yanny to work on the Aznaran case [Transcript of Proceedings, August 6, 1991, at 25, Ex. 1 to Ex. B, Declaration of Laurie Bartilson] and thus had no business being anywhere near the opposition because: (1) Yanny was disqualified from representing the Aznarans here; and (2) Yanny has been preliminarily enjoined from directly or indirectly representing the Aznarans [Reporter's Transcript of August 6, 1991, at 34].

In essence, the facts demonstrate and the Aznarans admit that they long knew of their purported injuries, but that the limitations period did not begin to run until they had come to the conclusion that the injuries they had allegedly suffered were the result of "brainwashing." Their opposition is the time to take that "brainwashing" theory -- the brainchild of an "expert" who has been found by federal courts from coast to coast to be unqualified to testify regarding that discredited theory -- and "just allege it."

Plaintiffs' assertion that they were "brainwashed" and so incapable of discovering their own claims is ludicrous on its face. The Aznarans are asking this Court to believe that Vicki Aznaran, who held one of the highest positions in Scientology's ecclesiastical hierarchy, was effectively "brainwashed" by her subordinates and employees. Just as it would be an impossibility for a court to entertain an action by a former Cardinal based on a claim that he had been "brainwashed" by his priests and nuns into devoting his life to Catholicism, and so did not discover until long after renouncing his religion that he had been damaged by his religious training and experiences, so must the Aznarans' claims be barred here.

As demonstrated in the declarations of Mark C. Rathbun (Ex. A) and Jesse Prince (Ex. H), the Aznarans were quite aware of damages claims against the Church, identical to their own, 10 years ago. Vicki Aznaran acknowledges as much in the video-taped speech given in October, 1984 appended to the declaration of Mark Rathbun.

The Aznaran declarations are a fraud on the Court.

The entire thrust of the Aznarans' disingenuous and tainted opposition is an attempt to so prejudice and so inflame the Court against defendants that it will escape the Court's notice that all the Aznarans' purported claims are incontrovertibly time-barred. They resort to unsubstantiated, scurrilous allegations, the falsity of which are exposed by the Aznarans' own deposition testimony.[1] [Ex. A, Declaration of Mark C. Rathbun and exhibits thereto]. They try to avoid the issues by lengthy and melodramatically false descriptions of the RPF, and of their stay in a Hemet, California Best Western Motel. [Id.]. Vicki Aznaran now claims she "escaped" from the RPF. Earlier, she testified in her deposition she never "escaped" from the RPF, but rather that she merely left. Vicki Aznaran cannot create an issue of fact with herself. Her current tale is a series of desperate lies to avoid the consequences of her earlier testimony as corroborated by the people who left with her and those who witnessed and participated in her voluntary departure from the Church. [Ex. G, Declaration of Lynn R. Farny; Ex. H, Declaration of Jesse Prince; Ex. I, Declaration of David Bush; Ex. A, Declaration of Mark Rathbun; Ex. C, Declaration of Lawrence E. Heller and exhibits.[2]

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[1] The new factual assertions are made by the Aznarans in a pair of "cookie-cutter" declarations. These declarations are so nearly identical that Richard Aznaran refers to his "husband" [Dec. of Richard Aznaran, ¶ 13] and his "escape from the RPF" in 1987. [Id., ¶ 2]. These declarations, like many filed by the Aznarans, are utterly suspect in both form and content. Not only do the new declarations contain contradictory statements which bolster their new legal theories, their format also indicates that the Aznarans are simply willing to swear to anything which their attorneys manufacture for them. The signature pages affixed to both declarations are either completely devoid of text or nearly so and are distinctly different in typestyle from the remaining portions of the declarations. They are not printed on numbered paper, nor are they on Greene's printed paper. It is plain that pre-signed attestations are merely dated and slapped on to whatever version of the facts the Aznarans are espousing at any particular moment.

[2] Defendants expect that the Court is as tired as they are of the ever-changing stories of plaintiffs, and of the ever-increasing

(continued...)

In the end, the Aznarans' lies are exposed by their own admissions, and their opposition stands utterly without merit. There is no dispute that the Aznarans' claims are time-barred and the only supposedly "controverted" facts are those which arise from the fact that the Aznarans' sworn statements now conflict with the Aznarans' sworn statements made earlier. Summary judgment for defendants, therefore, is compelled.

ARGUMENT

I. PLAINTIFFS' VIOLATION OF COURT ORDERS AND COURT RULES MANDATES THE GRANTING OF THIS MOTION FOR SUMMARY JUDGMENT

In its Order of August 9, 1991, this Court stated "Counsel are hereby reminded that the 35-page limit, excluding indices and exhibits, mandated by the Local Rules apply to all submissions." *See* Local Rule 3.10. Nevertheless, plaintiffs, in utter disregard of this Court's order, have filed an Opposition Memorandum of 37 pages and something called "Plaintiffs' Appendix of Facts in Support of Opposition to Motions For Summary Judgment" of 53 pages. Plaintiffs have incorporated by reference this Appendix into their one-paragraph "Statement of Facts." The total length of these two documents is *90* pages, almost *triple* the page limit set by this Court.

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[2] (...continued) venom with which they attack their former religion. The declarations found in defendants' Exhibits in Support of Replies to Motions for Summary Judgment on First Amendment and Statute of Limitations grounds provide the truth of these matters, supported by photographs and videotapes of the people and places claimed. The Court is urged to review these declarations and their exhibits carefully, if only to discover for itself that the "camp in the desert," was a pleasant ranch located in the heart of agricultural country, surrounded by green hills and eucalyptus trees. [Ex. A, Declaration of Mark Rathbun, Ex. 1 - 3].

Local Rule 3.10.1 specifically states that "[a]ppendices shall not include any matters which properly belong in the body of the memorandum of points and authorities or pre-trial or post-trial brief" (emphasis added). It is beyond dispute that a Statement of Facts belongs in a memorandum or brief, not in a separate unsworn appendix. Obviously, the only reason plaintiffs filed this separate appendix is to attempt to get around Local Rule 3.10 and this Court's August 9 Order.

Because of this clear violation of this Court's order and of Local Rules 3.10, 3.10.1, this Court should strike and refuse to consider plaintiffs' 53-page Appendix.[3]

Plaintiffs' opposition papers also fail to contain a Separate Statement of Genuine Issues, as required by Rule 7.14.2 of the Local Rules of this Court.[4] When the party opposing summary judgment fails to include such a statement, the facts of the movant set forth in the Statement of Uncontroverted Facts are deemed admitted:

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[3] If the Court does review the plaintiffs' Appendix, the Court should note that the plaintiffs repeatedly acknowledge that they were fully aware of their alleged injuries as early as 1974, and that they remained fully cognizant of their alleged injuries as they allegedly occurred throughout their tenure with the Church. Furthermore, the declarations filed herewith carefully show how many of the allegations contradict the Aznarans' own sworn testimony.

[4] Late on Friday, August 23, 1991, when this memorandum was finished except for preparation of indices, defendants did receive a document by telecopier which was captioned an Ex Parte Application to File Statements of Genuine Issues, though defendants have not been served. As defendants had already completed their reply in the absence of any Statement of Genuine Issues, and as the Statement has not been accepted for filing nor served, this Memorandum does not address the eleventh-hour Statement and responds only to those documents timely filed with the Court in opposition to the present motion.

> In determining any motion for summary judgment, the Court *will* assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the "Statement of Genuine Issues" and (b) controverted by declaration of other written evidence filed in opposition to the motion.

Rule 7.14.3, Local Rules of the United States District Court for the Central District of California (emphasis added).

The courts have been firm in requiring strict compliance with Local Rule 7.14.3 and its counterparts in other courts. In *Nilsson, Robbins, Dalgarn, Berliner, Carson & Wurst v. Louisiana Hydrolec*, 854 F.2d 1538 (9th Cir. 1988), the Ninth Circuit affirmed the district court's grant of summary judgment where the movant adequately supported its motion with declarations and deposition excerpts, and the opposing party did not support the opposition with specific facts. The court held that Local Rule 7.14.3 "serves as adequate notice to non-moving parties that if a genuine issue exists for trial, *they must identify that issue* and support it with evidentiary materials, without the assistance of the district court judge." 854 F.2d at 1545 (emphasis added). *Nilsson* makes clear that submission of a Statement of Genuine Issues is mandatory: it is not the trial judge's burden to sift through lengthy deposition testimony, memoranda, or other documents to determine what facts the plaintiffs believes are in dispute. Rather, the party opposing summary judgment *must* submit "a concise 'Statement of Genuine Issues' as to which it contends that there exists a genuine issue necessary to be litigated." Laidman v. Tivoli Industries, Inc., No. CV 89-4505-DWW, 1990 U.S. Dist. Lexis 18477 (C.D. Cal. July 17, 1990); see also Von Milbacher v. Teachers Insurance and Annuity Ass'n., Civ. No. 88-1033, 1988 U.S. Dist. Lexis 11742 (D.N.J. Oct. 28, 1988) (holding that a separate factual statement similar to a factual summary in a brief fails to meet the requirement of a concise separate statement of fact).

Where, as here, the movants have met their burden of showing entitlement to summary judgment, and the non-movant has not presented opposing facts in the required form, summary judgment must be granted. This was the outcome in Nilsson and Laidman under Local Rule 7.14.3, as well as in many cases in other courts with similar local rules. See, e.g., Cawley v. City of Port Jervis, 753 F.Supp. 128 (S.D.N.Y. 1990); Knowles v. Postmaster General, 656 F.Supp. 593 (D.Conn. 1987); Alvarado-Morales v. Digital Equipment Corp., 669 F.Supp. 1173 (D.P.R. 1987), aff'd 843 F.2d 613 (1st Cir. 1988); Furst v. New York City Transit Authority, 631 F.Supp. 1331 (E.D.N.Y. 1986).

II. PLAINTIFFS' CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS

A. The Claim For False Imprisonment Must Be Dismissed

Setting aside the Aznarans' proclivity for self-contradiction and their consuming devotion to smearing defendants rather than responding to defendants' factual showing and arguments, the most notable feature of the Aznarans' opposition regarding the false imprisonment claim is their complete failure to refute defendants' showing that the claim, based on Ms. Aznaran's tenure on the RPF from March 3 to March 31, 1987, is barred by the one-year statute of limitations. First, plaintiffs explicitly concede the *only* relevant fact -- Ms. Aznaran left the RPF on March 31, 1987, over one year before this lawsuit was filed. Plaintiffs' Opposition at 16 (hereinafter "Pl. Opp."); *see* Defendants' Memorandum at 9-13 (hereinafter "Def. Mem."); Defendants' Uncontroverted Fact No. 4.[5] Second, they make no legal argument that Ms. Aznaran's claim based on the RPF, standing alone, falls within the limitations period. Thus, the false imprisonment claim based on the RPF must be dismissed.

Instead, plaintiffs assert *for the first time* in this case, less than *two months* before trial, that Ms. Aznaran's false imprisonment claim is based on nine days that she and her husband spent in a publicly accessible Best Western Hotel in Hemet, California, during which time she and her husband drove to Los Angeles in their own truck, went shopping, walked around town, ate at public restaurants, went to a public laundromat, engaged in sexual activities with each other, and had a telephone in their private motel room. [V.A. Dep. at 809-21, 905; R.A. Dep. II at 68-74; Def. Ex G (Exs. 11-15)]. This belated claim must not be considered by this Court and is frivolous as a matter of law.

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[5] Plaintiffs attempt to distract this Court from the obvious fact that they missed the statutory deadline for filing their lawsuit by focusing on irrelevant allegations concerning the RPF prior to April 1, which in any event, are directly contradicted by Ms. Aznaran's own testimony. Indeed, the Aznarans and their counsel are so busy changing their stories that they directly contradict each other: Ms. Aznaran states that on March 31, 1987, when Jesse Prince and David Bush "returned [in a rental car,] *I ran down the hill* with my guard, Chris Byrnes, chasing me." V.A. Dec., Aug. 16, 1991, ¶ 4 (emphasis added). By contrast, her attorney states: "Jesse came back to Happy Valley in a car, picked up Vicki, *who was still laying under the tree and left*. V.A. Dep. at 734, 740-41." [Pl. Opp. at 13] (emphasis added).

As plaintiffs explicitly concede, "the imprisonment at Hemet was not expressly pleaded," in their complaint. Pl. Opp. at 16 n.3; see Complaint, ¶ 30 (false imprisonment allegation explicitly limited to Ms. Aznaran's tenure at Happy Valley). This Court permitted the plaintiffs until August 18, 1989 to file an amended complaint, long after much discovery was completed, including production of documentary evidence proving that Ms. Aznaran had left the RPF on March 31, 1987. See Def. Exhibit D [Ex. 40 to V.A. Dep.]; Def. Exhibit G. Plaintiffs chose not to amend their complaint, and therefore never alleged that the period in the motel in Hemet constituted false imprisonment. Based on the absence of any such allegation, the Aznarans must be precluded from raising this claim for the first time now.

The Aznarans further argue that they should be entitled to rely on their allegations in the July 7, 1989 Joint Status Conference Report of Counsel. Pl. Opp. at 16 n.3. Defendants agree. In that Report, plaintiffs stated the false imprisonment claim in its entirety as follows:

> As part of defendants' program of coercive persuasion, and as an additional technique thereof, plaintiff Vicki Aznaran was falsely imprisoned in something called the Rehabilitation Project Force wherein she was constantly guarded, compelled to eat substandard food, to run around a telephone pole literally for days on end, locked up at night and was subjected to hours of indoctrination daily.

Status Report, at 5-6 (emphasis added). As the Court can see, there is not even a hint that the false imprisonment claim includes the Aznarans' stay at the Best Western Motel.

Moreover, even if it were not time-barred, a false imprisonment claim based on the Aznaran's alleged experiences in the RPF would not be justiciable. See, Motion for Summary Judgment Pursuant to First Amendment, pp. 14-25; 32-34. The RPF is based solely on the writings of L. Ron Hubbard, and is considered by the members of the Scientology religious order to whom those writings apply to be a mandatory and essential element of their religious beliefs and practice. [Flinn Dec., Exhibit to First Amendment Motion, ¶ 24; Ex. G, Declaration of Lynn R. Farny; Ex. H, Declaration of Jesse Prince; Ex. I, Declaration of David Bush]. The appropriateness of a hierarchical church's non-violent disciplinary actions taken against a member has consistently been held to be beyond the cognizance of civil courts. Indeed, the courts have been particularly deferential when questions of church discipline are at issue. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 717 (1976) ("questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern"); Higgins v. Maher, 210 Cal.App.3d 1168, 1170, 258 Cal.Rptr. 757, 757-58 (1989) (holding disciplinary actions against a Roman Catholic priest, including removal from his position, incarceration in a psychiatric hospital, and treatment which included psychiatric drugs and electroshock, were nonjusticiable.)

Plaintiffs also rely on the "deposition and discovery procedure" as a basis for their newly invented claim. Pl. Opp. at 16 n.3. Yet this Court could painstakingly scrutinize every word in the record without finding a single hint that plaintiffs intended to assert this claim. Certainly defendants could not have been expected to conclude on their own that the Aznarans would conceivably assert that a stay at a public motel during which time the Aznarans moved about freely, travelled to Los Angeles and to other public facilities and enjoyed the use of a private room with a telephone, constituted false imprisonment.

The obvious truth is that when plaintiffs and their counsel finally realized that the indisputable documentary evidence proved that Ms. Aznaran left the RPF on March 31, and that her false imprisonment claim was dispositively barred by the statute of limitations, they simply invented a new claim and created new "facts" to support it. This Court must not countenance such abuse of the integrity of its processes by permitting a brand new claim based wholly on self-contradicted facts to be asserted only a few weeks before trial.

In any event, the claim of false imprisonment based on the period from March 31 to April 9, 1987 is completely meritless as a matter of law. Defendants submit that no court in the history of this country has held that a nine-day stay in a publicly accessible motel, with a telephone used to make numerous long-distance calls, including to Ms. Aznaran's sister, and which period included a drive in their own pick-up truck to Los Angeles, eating out in public restaurants, taking walks on the public streets, shopping in stores open to the general public, and going to a public laundromat, constitutes false imprisonment.

It is undisputed that the Aznarans had substantial periods of time alone in their motel room and that they walked around town and went to stores and restaurants by themselves. See V.A. Dep. at 817-21.[6] Indeed, the Aznarans frequently left their hotel room, and were late for several appointments with Mr. Rathbun during this time period, saying that they had been out to restaurants, or out shopping. [Ex. B, Declaration of Mark Rathbun.] Once they drove their truck to Los Angeles, breaking a meeting with Mr. Rathbun completely. Id. No one prevented the Aznarans from using the telephone in their room to call the police, the FBI, the media, the motel manager, their Congressman or other local, state or federal officials. No one prevented the Aznarans when they were in Los Angeles from going to the police or the FBI. No one prevented the Aznarans from driving their truck to the Hemet Police Station, blocks from their motel.

The Aznarans' allegation that they feared unspecified consequences in the future if they left the motel in Hemet does not constitute false imprisonment as a matter of law, and plaintiffs have not cited a single case that even suggests the contrary. As plaintiffs concede, the tort of false imprisonment requires the "nonconsensual, intentional confinement of a person, without lawful privilege, for an appreciable length of time, however short." Molko v. Holy Spirit Association, 46 Cal.3d 1092, 1123, 252 Cal.Rptr. 122, 139 (1988) (emphasis added), cert. denied, 490 U.S. 1084 (1989) (internal quotations and citations omitted); see Pl. Opp. at 6. The confinement must be complete, and if there is a known reasonable means of escape, there can be no false imprisonment. See Restatement of Torts (Second), section 36, at 54-55 (1965) (hereinafter "Rest."). Because the Aznarans could have walked away, driven away, or called the police, the claim that they were confined is frivolous.

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[6] Ms. Aznaran's testimony is a far cry from her counsel's shrill and false assertions that the Aznarans were guarded 24 hours a day and were ordered to stay in the motel unless they received permission to leave. Pl. Opp. at 11, 15-16.

This case is virtually indistinguishable from Snyder v. Evangelical Orthodox Church, 216 Cal.App.3d 297, 264 Cal.Rptr. 640 (1989). In Snyder, one plaintiff, Roberson, a Bishop of the Church, confessed to his superior that he was having an extramarital affair with Snyder. The superior ordered Roberson to spend a week in a motel without outside contact, including his family, or his adulterous relationship would be exposed. The court rejected his claim of false imprisonment based on his submission to the threats and "blackmail" to reveal his confidences, where Roberson spoke to Snyder and his daughter; "went on a drive with both women; left the motel and took a walk; was visited in the motel by Snyder; [and] went out to dinner with Snyder ..." Id. at 304, 264 Cal.Rptr. at 643. Just as there was no false imprisonment in the motel in Snyder, there was none at the Hemet Best Western Motel that served as home base for even broader freedom of movement and activity for the Aznarans.

The Aznarans are correct that there can be false imprisonment through severe duress, but they persist in ignoring the fact that there still must be complete confinement. See Rest., section 40A, at 61. Thus, even assuming the Aznarans were subjected to duress during their stay at the Best Western Motel, it is uncontroverted that they were not completely confined.

Each case cited by plaintiffs for the proposition that duress or fear of threats may constitute false imprisonment involved extraordinarily threatening consequences and extreme confinement. See People v. Riddle, 189 Cal.App.3d 222, 228, 234 Cal.Rptr. 369, 373 (1987) (defendant pointed gun at mother and ordered both parents out of the trailer, i.e., to go where they did not wish to go; People v. Martinez, 150 Cal.App.3d 579, 586, 198 Cal.Rptr. 565, 569 (1984) (victim repeatedly raped by defendant, who threatened her with screwdriver and threatened to shoot her husband if she resisted); Parnell v. Superior Court, Alameda County, 119 Cal.App.3d 392, 409, 173 Cal.Rptr. 906, 916 (1981) (abduction of seven-year-old boy, held by defendant for eight years, and subjected to repeated acts of sodomy); Shanafelt v. Seaboard Finance Co., 108 Cal.App.2d 420, 422-23, 239 P.2d 42 (1951) (defendant blocks pregnant woman's only means of escape; orders her to stay in the house until her furniture is seized).[7] Plaintiffs' reliance on these cases to assert false imprisonment in a Best Western Motel demonstrates the desperate and frivolous nature of their claim.

Plaintiffs' assertions that there can be false imprisonment by a private party within the confines of the area from Hemet to Los Angeles is likewise frivolous. The sources upon which plaintiffs rely referred exclusively to improper use of legal process by government officials to restrain an individual within a precise geographic area. See Rest., section 36, at 56 (comment b); Prosser and Keaton On Torts section 11 (5th ed. 1984); Allen v. Fromme, 141 App.Div. 362, 126 N.Y.S. 520 (1910) (sole case relied upon by Prosser; plaintiff released from prison upon posting bond that confined him to "jail limits").

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[7] The ancient case of Fotheringham v. Adams Express Co., 36 F. 252 (E.D.Mo. 1888), is wholly irrelevant to the facts here. In Fotheringham, the plaintiff had no means of escape, as he was "at all times subject to the control and direction" of defendant's agents, and force was threatened against him if he attempted to leave. This is a far cry from the Aznarans' sojourn at the Best Western Motel.

As plaintiffs concede that Ms. Aznaran voluntarily left the RPF on March 31, 1987, and because she was not falsely imprisoned after that time, or ever, the continuing tort doctrine or "conspiracy" doctrines, upon which plaintiffs so heavily rely, Pl. Opp. 16-21, is irrelevant and the claim must be dismissed.

B. The Claims for Intentional and Negligent[8] Infliction of Emotional Distress Must Be Dismissed[9]

In Plaintiffs' Memorandum in Opposition to Motion for Summary Judgment, dated Dec. 7, 1990, at 54-57 (hereinafter "Pl. Dec. 7 Mem."), the Aznarans alleged several specific acts causing them emotional distress, in addition to their claim of

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[8] Plaintiffs assert that their claim for negligent infliction of emotional distress is based "on the principles set forth in Molko and in Wollersheim v. Scientology." Pl. Opp. at 22. Molko did not contain a claim for negligent infliction of emotional distress, see Molko, supra, 46 Cal.3d at 1101, 252 Cal.Rptr. at 125, and the court in Wollersheim rejected plaintiff's claim for negligent infliction of emotional distress. Wollersheim, 212 Cal.App.3d 872, 900, 260 Cal.Rptr. 331, 349 pet. for cert. granted, vacated and remanded on other grounds, ___ U.S. ___, 111 S.Ct. 1298 (1991). Plaintiffs' express reliance on Wollersheim mandates dismissal of the negligence claim. See also Nally v. Grace Community Church, 47 Cal.3d 278, 253 Cal.Rptr. 97 (1988) cert. denied, 490 U.S. 1007 (1989).

[9] Defendants do not understand what plaintiffs mean in asserting that this Court has already determined the legal sufficiency of their second through eleventh causes of action. Pl. Opp. at 21-22. Obviously, this Court has not addressed the statute of limitations issues, which defendants expressly reserved in their summary judgment motion dated October 22, 1990. Any suggestion that the Court has already ruled on the limitations issues is simply false.

"brainwashing."[10] In this motion, defendants demonstrated that each of the alleged specific acts set forth in plaintiffs' prior memorandum occurred before April 1, 1987, and were barred by the statute of limitations, because the Aznarans themselves had explicitly testified that they experienced and were aware of the alleged emotional distress at the time. Def. Mem. at 16-19; Uncontroverted Fact Nos. 5-7. In their opposition, plaintiffs have not even attempted to refute defendants' showing that each of the specific acts set forth in their prior opposition papers is barred by the statute of limitations. Thus, any emotional distress claim based on these specific acts must be dismissed.

Plaintiffs now appear to rely exclusively on their claim based on "unwitting[] expos[ure] to coercive persuasion." Pl. Opp. at 24; see Joint Status Report, at 5.[11] As set forth in Def. Mem. at 16-19, this claim is barred by the two-year Texas statute of limitations for personal injury. Tex. Civ. Code Ann. section 16.003(a) (Vernon 1986). Plaintiffs are simply wrong that California law applies to this claim, which arose in Texas in or about 1972. See Pl. Opp. at 22-23 n.9. Thus, plaintiffs' reliance on California tolling theories are simply irrelevant.

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[10] Plaintiffs' "coercive persuasion" or "brainwashing" theory is barred by both the First Amendment and standards for admissibility of purportedly scientific evidence. See Defendants' Motion for Summary Judgment, Pursuant to the First Amendment, dated July 11, 1991, at 27-32, and Defendants' Motion to Exclude the Testimony of Plaintiffs' Designated Expert, dated July 29, 1991.

[11] To the extent plaintiffs are claiming that the alleged acts set forth in Pl. Opp. at 29-30, occurring after March 31, 1987, are themselves actionable, as opposed to being part of the alleged coercive persuasion, this Court must not consider such claims, as they form no part of the Complaint, the Status Report, or plaintiffs' prior submissions concerning their emotional distress claims.

First, when a claim arises in another state, "in determining the time when a cause of action arose and the statute of limitations began to run, the courts will apply the law of the state in which the cause arose." 12 Cal.Jur.3d, Conflict of Laws section 101, at 604 (1974) (emphasis added); see State of Ohio v. Porter, 21 Cal.2d 45, 51-52, 129 P.2d 691 (1942), cert. denied, 318 U.S. 757 (1943).

Second, when a suit is brought in California for a cause of action arising in another state, and the claim would be barred in that state, California "borrows" the statute of limitations of that state and bars the claim in the courts of California. See Cal. Code Civ. Proc. section 361.[12] Only "[w]here the cause of action was held by a citizen of this state from the time it accrued," would the borrowing statute not apply. 3 B. Witkin, California Procedure, section 71, at 99 (3d ed. 1985); see Biewend v. Biewend, 17 Cal.2d 108, 115, 109 P.2d 701 (1941) ("since the plaintiff has not been a citizen of this state from the time the cause of action accrued, [section 361] has the effect of applying the Missouri statute of limitations to those [claims] accruing" in Missouri) (emphasis added); 12 Cal.Jur.3d, Conflicts of Law section 103 at 606-07 (exception to section 361 applies only when plaintiff "has held the cause, as a California citizen, from the time it accrued") (emphasis added); Stewart v. Spaulding, 72 Cal. 264, 266, 13 P. 661 (1887). The Aznarans were not citizens of California until 1981, nine years after their emotional distress cause of action accrued, nor were they California citizens in April 1988 when this suit was commenced. Thus, because plaintiffs do not even attempt to dispute that the Aznarans' emotional distress claim based on "coercive persuasion" would be barred if brought in Texas, see Def. Mem. at 17-18, section 361 applies to bar the claim in California.

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[12] California Code of Civil Procedure section 361 states in full:

> When a cause of action has arisen in another state, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this state, except in favor of one who has been a citizen of this state, and who has held the cause of action from the time it accrued.

Moreover, even if California limitations law applied to this claim, plaintiffs do not even attempt to dispute that defendants' alleged practices were allegedly causing them emotional distress as early as 1974, and that they were acutely aware of this distress at that time as well as throughout their tenure with the Church. Def. Mem. at 16-19; Uncontroverted Fact Nos. 5-7; Declaration of Vicki Aznaran, dated Aug. 16, 1991, ¶ 13(E); Declaration of Richard Aznaran, dated Aug. 16, 1991, ¶ 4. Thus, plaintiffs' reliance on "delayed discovery" or "fraudulent concealment" is to no avail.

The Aznarans are simply wrong, and can cite no authority for their assertion that their claims accrued only when "the Aznarans discovered that they had been brainwashed and unduly influenced by defendants." Pl. Opp. at 23. Rather, the law is clear that the claim accrued no later than when the Aznarans were aware that they allegedly suffered severe emotional distress, not when they came up with a legal label -- "brainwashing" -- for the emotional distress they concededly were aware they were allegedly suffering. Thus, the California Supreme Court has held:

> *the uniform California rule* is that a limitations period dependent on discovery of the cause of action begins to run *no later* than the time the plaintiff learns, or should have learned, the *facts* essential to his claim. It is *irrelevant that the plaintiff is ignorant of his legal remedy or the legal theories* underlying his cause of action. Thus, if one has suffered appreciable harm and knows *or suspects* [the] cause, the fact that an attorney has not yet advised him does not postpone commencement of the limitations period.

Gutierrez v. Mofid, 39 Cal.3d 892, 897-98, 218 Cal.Rptr. 313, 316 (1985) (citations omitted, emphasis original and added); *see McGee v. Weinberg*, 97 Cal.App.3d 798, 802, 159 Cal.Rptr. 86, 89 (1979) ("Knowledge of *facts* is what is critical, not knowledge of legal theories.") (emphasis added).

Plaintiffs' "fraudulent concealment" tolling theory is wholly untenable as applied both to the emotional distress claims and to every other claim of the Aznarans. A fraud claim (or any claim based on fraudulent concealment) runs from the time when a plaintiff, "tested by an objective standard," "discovers the facts constituting the violation or in the exercise of reasonable diligence should have discovered them." *Meadows v. Bicrodyne Corp.*, 785 F.2d 670, 672 (9th Cir. 1986) (citations omitted); *Gutierrez*, *supra*, 39 Cal.3d 896-99, 218 Cal.Rptr. at 315-16. Moreover, "[i]f a plaintiff has inquiry notice, he must prove that he could not have reasonably discovered the facts constituting the alleged fraud." *David K. Lindemuth Co. v.*

Shannon Financial Corp., 660 F.Supp. 261, 264 (N.D.Cal. 1987); Miller v. Bechtel Corp., 33 Cal.3d 868, 191 Cal.Rptr. 619, 623-24 (1983); Def. Mem. at 25-27. Defendants have shown in explicit detail that, as a matter of uncontroverted fact, plaintiffs should have been and in fact were well aware of any alleged frauds no later than 1984, and that they were on reasonable inquiry notice of any alleged frauds, which could readily have been discovered by plaintiffs, well over three years before they commenced this lawsuit. See Def. Mem. 27-38; Separate Statement of Uncontroverted Facts, Fact Nos. 10-16.

Thus, because the Aznarans concededly were aware well before April 1, 1987, that the alleged acts of defendants were allegedly causing them emotional distress, and because all the acts that plaintiffs have testified or previously asserted caused them emotional distress accrued before April 1, 1987, the claims for negligent and intentional infliction of emotional distress must be dismissed as untimely.

C. The Claim for Loss of Consortium Must Be Dismissed

Plaintiffs do not contest the facts set forth by defendants, Pl. Opp. at 36-37, which demonstrate that plaintiffs' alleged loss of consortium ended no later than March 31, 1987, more than one year prior to the filing of this lawsuit, that plaintiffs were aware they were experiencing a loss of consortium at the time, and that they were aware the alleged harm was caused by defendants' alleged conduct. See Def. Mem. at 21-24; Uncontroverted Fact Nos. 7-9. This Court must accept this undisputed evidence and dismiss this claim.

Plaintiffs' only excuse for their late filing of this claim is that "the injuries caused to plaintiffs' marriage in consequence of defendants' imposition of coercive persuasion without plaintiffs' knowledge or consent were not necessarily immediately attributable to defendants' misconduct." Pl. Opp. at ¶ 37 (emphasis added). Not only is this the first time plaintiffs have ever made this vague assertion, but the mere statement that the inquiries "were not necessarily" attributable to defendants does not constitute the "specific facts showing that there is a genuine issue for trial" that the non-moving party "must set forth" to defend against a motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (emphasis added).

Here, of course, the undisputed evidence shows that, whether or not plaintiffs "necessarily" would be aware of the cause of their alleged claim, plaintiffs were in fact aware of their alleged loss of consortium at the time, and that they did in fact know it was attributable to defendants' alleged conduct. Thus, Ms. Aznaran testified that she asked Mr. Aznaran for a divorce in 1974, as a result of statements by Dean Stokes that Mr. Aznaran was a "suppressive person," which Ms. Aznaran ultimately accepted as true. V.A. Dep. at 862-63. Under the Texas two-year statute of limitations, which applies pursuant to the California borrowing statute, Civ. Proc. Code § 361, the 1974 divorce claim is untimely. Def. Mem. at 21.

As to the claim based on purported brief periods of separation in 1986 until March 31, 1987, Ms. Aznaran testified that she specifically requested of her superiors in the fall or winter of 1986 that she "wanted to work something out so that I could be with Richard, we had been apart too long." V.A. Dep. at 1218; Def. Mem. at 23; Uncontroverted Fact No. 8. The Aznarans also assert that they were aware that they were separated as a result of defendants' alleged conduct while Ms. Aznaran was on the RPF from March 3 to March 31, 1987. Pl. Opp. at 12; R.A. Dec., Aug. 16, 1991, ¶ 4."

Even if the delayed discovery rule applied to a claim of loss of consortium, the statute runs not from the time a plaintiff determines her legal theory, but from when "he has notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to his investigation." Gutierrez, supra, 39 Cal.3d at 896-97, 218 Cal.Rptr. at 315 (internal quotations omitted).

As the Aznarans were indisputably aware of their purported injury and its cause before April 1, 1987, this claim must be dismissed. Priola v. Paulino, 72 Cal.App.3d 380, 140 Cal.Rptr. 186, 191-92 (1977); Uram v. Abex Corp., 217 Cal.App.3d 1425, 1438, 266 Cal.Rptr. 695, 703 (1990). That the Aznarans had not yet come up with the label of "brainwashing" to describe the cause of the injury, of which they were long aware, is, of course, legally irrelevant. See Gutierrez, supra, 39 Cal.3d at 897-98, 218 Cal.Rptr. at 316; McGee, supra, 97 Cal.App.3d at 803, 159 Cal.Rptr. at 89.

D. Plaintiffs' Remaining Causes of Action Must Be Dismissed

Plaintiffs do not controvert any of the facts or law set forth by defendants, which demonstrate that each of plaintiffs' six remaining causes of action -- fraud, constructive fraud, breach of contract, restitution, invasion of privacy, and statutory California minimum wage claim -- are barred by the statute of limitations.[13] Instead, plaintiffs simply assert, without any explanation:

> Each of the tolling theories, discussed above, is applicable to the remaining causes of action and, under the facts of this case, are sufficient to raise triable issues as to the accrual of the statute of limitations of each of the remaining causes of action.

Pl.Opp. at 37.

As plaintiffs have failed to controvert any of defendants' Statement of Uncontroverted Facts, they must all be taken as true. See Local Rule 7.14.3. Because there is nothing in plaintiffs' opposition papers as to these six causes of action to which defendants can respond, defendants hereby rely on their prior memorandum and supporting papers, which demonstrate that each of these six claims are time-barred, as well as Point IIB, supra, which debunks plaintiffs' "fraudulent concealment" tolling theory, and Point III, infra, which demonstrates that plaintiffs' "conspiracy" tolling theory is meritless.

III. THE STATUTE OF LIMITATIONS IS NOT TOLLED BY CONSPIRACY

The Aznarans contend that the statute of limitations should be tolled because defendants' alleged acts were allegedly carried out pursuant to a civil conspiracy, citing Wyatt v. Union Mortgage Co., 24 Cal.3d 773, 157 Cal.Rptr. 392 (1979). Plaintiffs seriously misconstrue the scope of Wyatt, and on the undisputed facts of this case, Wyatt does not toll the statute of limitations for any of plaintiffs' claims that are otherwise barred by the statute of limitations.

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[13] Defendants once again note that plaintiffs once again concede that there is no cause of action for civil conspiracy. Pl. Opp. at 17 n.7; see Joint Status Report at 8 n.1; Baltimore Football Club, Inc. v. Superior Court, 171 Cal.App.3d 352, 359 n.3, 215 Cal.Rptr. 323, 326 n.3 (1985); 5 B. Witkin, Summary of California Law, section 44 (9th ed. 1988); 12 Cal.Jur.3d, Civil Conspiracy section 4 at 179 (1974) ("Since there is no cause of action for conspiracy in and of itself, the statute of limitations is determined by the nature of the action in which the conspiracy is alleged or appears."). Thus, there is no basis for this Court's continued refusal to dismiss the plaintiffs' fifth cause of action alleging "Conspiracy."

A. There is No "Last Overt Act" Pursuant to a Conspiracy within the Limitations Period For Several of the Causes of Action

Assuming for the moment that the tolling doctrine of Wyatt applies to non-fraud actions, but see Point IIIB, infra, no overt acts even remotely relevant to several of the alleged torts are even alleged to have occurred within the limitations period. In the absence of an overt act in furtherance of a conspiracy to commit the alleged wrong, the limitations period is not tolled.

Ms. Aznaran's alleged false imprisonment at the RPF ended on March 31, 1987, outside the one-year limitations period, and the newly invented claim of false imprisonment after March 31, 1987, is meritless as a matter of law. See Point IIA, supra. Even assuming that there was a conspiracy to falsely imprison Ms. Aznaran at the RPF, there is no evidence of any overt act in furtherance of such false imprisonment conspiracy after she left on March 31. Of course, under Wyatt, "it is imperative for the plaintiff to allege when the last overt act took place." 24 Cal.3d at 789, 157 Cal.Rptr. at 401 (internal quotations omitted).

In addition, the "last overt act" must be in furtherance of a conspiracy to commit the alleged tort. In other words, a last overt act in furtherance of a conspiracy to defraud cannot toll the statute of limitations for the unrelated claim of false imprisonment. See Wyatt, 24 Cal.3d at 788, 157 Cal.Rptr. at 401 (plaintiff must allege "at least some act pursuant to the conspiracy was still being performed . .. within the . . . limitations time period") (emphasis added); Maheu v. CBS, Inc., 201 Cal.App.3d 662, 674, 247 Cal.Rptr. 304, 310-11 (1988) (act that gives rise to a copyright claim is not in furtherance of a conspiracy to convert wrongfully the same property). Because there was no false imprisonment "conspiracy" after March 31, 1987, the claim is time-barred, even assuming Wyatt's relevance.

The identical argument applies to the loss of consortium claim. Any alleged loss of consortium ended no later than March 31, 1987, outside the limitations period. See Point IIC, supra; Def. Mem. at 19-25; Uncontroverted Fact Nos. 7-9. Plaintiffs allege no overt act in furtherance of a conspiracy to cause a loss of consortium after March 31, 1987, and Ms. Aznaran specifically testified that the plaintiffs experienced no such loss after March 31, 1987. V.A. Dep. at 746-50, 818-21. Therefore this claim is time-barred, even if Wyatt otherwise is applicable to this tort.

As to Ms. Aznaran's invasion of privacy claim, her testimony explicitly eliminates any issue of fact whether there was ever a conspiracy to invade her privacy, let alone an overt act in furtherance of such a conspiracy after March 31, 1987. Thus, Ms. Aznaran's testimony shows that the individual who allegedly invaded her privacy did so on his own, and against the wishes of the only two other individuals who were aware of his acts. V.A.

Dep. at 1260-62; Def. Mem. at 47-48; Fact No. 23.[14]

B. The Conspiracy Tolling Doctrine Does Not Apply to Torts

Both the specific holding of Wyatt and its rationale are limited to claims of economic fraud, and this federal court should be cautious in expanding this unusual doctrine, particularly given that the Ninth Circuit has explicitly repudiated Wyatt when federal law governs the time of accrual of a cause of action. See Gibson v. United States, 781 F.2d 1334, 1340 (9th Cir. 1986), cert. denied, 479 U.S. 1054 (1987); Compton v. Ide, 732 F.2d 1429, 1432-33 (9th Cir. 1984) ("Mere continuance of a conspiracy beyond the date when injury or damage occurs does not extend the statute of limitations. . . . It is the wrongful act, not the conspiracy, which is actionable in a civil case."). Defendants are unaware of any other jurisdiction that has adopted Wyatt's civil conspiracy theory, presumably because, as plaintiffs' position here amply illustrates, it virtually eliminates the statute of limitations as a bar to trial on long-stale claims.

In Wyatt, the plaintiffs alleged claims of fraud and constructive fraud in the obtaining of a mortgage loan. Wyatt focused on the nature of the fraud in that case as an ongoing scheme that froze the plaintiffs in place absent judicial relief. 24 Cal.3d at 786, 788, 157 Cal.Rptr. at 400-01.

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[14] The totally vague, unsubstantiated statements in plaintiffs' declarations that their invasion of privacy claim is based on the acts of one Kimberly Yager, V.A. Dec. ¶ 13(F); R.A. Dec. ¶ 12(E), must be ignored by this Court. This alleged incident has never been part of the Aznarans' claim for invasion of privacy in their complaint, status report, testimony, or any other papers filed in this matter. Again, the Aznarans have chosen to invent a new claim once they realize that the claim heretofore asserted is time-barred. In any event, nothing in the plaintiffs' papers demonstrates an invasion of privacy by Ms. Yager, let alone by defendants.

The Aznarans' attempt to apply Wyatt to any and all of their various tort, contract, and statutory claims goes far beyond any known construction of the Wyatt fraud tolling theory. The Wyatt doctrine has never been extended to claims for negligent or intentional infliction of emotional distress, breach of contract, restitution, loss of consortium, invasion of privacy, or a statutory minimum wage claim. The acts plaintiffs complained of here that allegedly resulted in such wrongs were in fact separate, distinct and completed acts, which gave rise to a cause of action at the time they allegedly occurred, and certainly no later than when plaintiffs became aware of the fact of their alleged injuries. See Gutierrez, 39 Cal.3d at 896-97, 218 Cal.Rptr. at 315. These distinct acts cannot be blithely equated with the type of unified, ongoing economic scheme to defraud a party, in which individual acts do not themselves support a claim for damages, but rather ultimately culminate in a fraud being perpetrated on the plaintiff and which holds the plaintiff in place, such as occurred in Wyatt.

Not only should this federal court not distort Wyatt to reach intentional tort, contract, and statutory claims, but it is inconceivable that the California courts would so stretch Wyatt to reach the long-stale allegations here, many of which accrued over fifteen years before suit was commenced and as to which the plaintiffs themselves cannot recall the relevant facts. In the interests of federalism and comity alone, this federal court should not be the first court to expand Wyatt so drastically.

C. Under the Circumstances Here, Wyatt Does Not Apply

The circumstances of the alleged fraud here, involving alleged misrepresentations by defendants that they would provide plaintiffs with spiritual and psychological services that would make them better persons, Complaint, ¶ 54, are so distinct from Wyatt as to make the civil conspiracy tolling theory inapplicable for several reasons.

First, the Aznarans' testimony makes clear that there could not have been a conspiracy to defraud them. Mr. Aznaran concedes that he made the same representations to others, including to Ms. Aznaran, that he now alleges were fraudulent, and that he believed them at the time. R.A. Dep.II at 635-41. He further testified that those who made the representations to him indicated that they too believed them, and that Mr. Aznaran believes that they too were "brainwashed". Id. at 642, 647-57. Similarly, Ms. Aznaran explicitly testified that the entire leadership of Scientology was "brainwashed" into accepting Scientology beliefs. V.A. Dep. at 1200-01. Mr. Aznaran said:

> You don't rise in power unless you are brainwashed. It's only people who are thoroughly and totally and completely brainwashed that are trusted with power.

R.A. Dep.II at 666. In such circumstances, where everyone believes in the statements alleged to be fraudulent, the Aznarans have failed to create a genuine issue of fact either of a fraud or of a conspiracy to defraud the plaintiffs.

Second, the plaintiffs have relied upon five types of representations as the exclusive basis for their fraud claims. See Pl. Dec. 7 Opp. at 38; see Def. Mem. at 35-37. These representations were made to the Aznarans between 1971 and 1973 in Texas. Pl. Dec. 7 Opp. at 33-36; see also V.A. Dep. at 1236-50 (alleged representations made to her between 1972-77 in Texas were made "too long ago" for her to remember specifically what was represented to her). Because plaintiffs have relied exclusively on representations made to them in Texas, the Texas statute of limitations law applies, pursuant to California's borrowing statute. See Civ. Proc. Code . Like the Ninth Circuit, Texas follows the discovery-of-the-fraud accrual rule, Interfirst Bank-Houston v. Quintana Petroleum Corp., 699 S.W. 2d 864, 875 (Tex.App. 1985), not California's unique civil conspiracy tolling theory. Def. Mem. at 27. Thus, under Texas law, only those fraudulent acts that occurred within two years of discovery of the fraud are actionable. See Cathey v. First City Bank of Arkansas Pass, 758 S.W.2d 818, 822 (Tex.App. 1988) ("any act committed more than two years prior to the filing of this conspiracy action would be barred by limitations").

Even if the Aznarans continued to experience the alleged detriments of the alleged misrepresentations after they moved to California in 1981, eight to ten years after they were allegedly induced to join the Scientology religion, there is no legal basis for this federal court to engraft the California civil conspiracy tolling doctrine onto Texas law. Moreover, there is no "last overt act" of a conspiracy to defraud within the three-year limitations period, as Ms. Aznaran testified that the last fraudulent misrepresentation occurred in 1977. Thus, Ms. Aznaran's fraud claims resulting from representations in Texas are barred by the statute of limitations, and Wyatt is irrelevant. That Ms. Aznaran is now willing to contradict her sworn testimony, and assert that she continued to rely on alleged misrepresentations (from people that she has testified believed the alleged representations themselves) simply demonstrates plaintiffs' willingness to rewrite the "evidence" to suit their monetary desires.

Even assuming that California law applies, that the representations were fraudulent, and that overt acts in furtherance of a conspiracy to defraud occurred within the limitations period, any reasonably prudent person would have discovered the true nature of the allegedly fraudulent representations by the early 1980's at the absolute latest. Def. Mem. at 25-38; Uncontroverted Fact Nos. 5-16. Once discovered, the Aznarans could simply have ended their association with the Church, as they ultimately chose to do in 1987. The Aznarans have simply produced no evidence that, at any time after they did or should have discovered the alleged frauds in the early 1980's, they could not have followed the procedures for leaving their staff positions that they ultimately followed in April 1987.

From the time a reasonable person would have discovered defendants' allegedly fraudulent conduct, any detriment the Aznarans experienced was, as a matter of fact and law, a voluntary decision to remain with the Church, and was not a result of any fraud by defendants that continued to hold the plaintiffs in place, as required by Wyatt. The Aznarans, of course, had no legal obligation to remain in the Church and were free to leave. Their own testimony clearly shows that they did in fact choose to leave the Church as members in good standing in

1987 and received a low-interest loan of $20,000 and letters of recommendation for future employment, which Ms. Aznaran stated were "good consequences" of leaving. V.A. Dep. at 1185.

This situation contrasts sharply with Wyatt. The key point in Wyatt is that even after the plaintiffs learned of the fraud, and even after they had hired attorneys, there was no way to get out of their legal and economic obligations to defendants prior to judicial action. Thus in Lewelling v. Farmers Ins. of Columbus, Inc., 879 F.2d 212 (6th Cir. 1989), the court, in applying California law, made clear that Wyatt is an unusual exception to the general rule that a fraud claim "begins to run when an individual becomes aware of fraudulent harm." Id. at 217. For the Wyatt exception to apply there must be "evidence . . . that sheer economic duress or overpowering influence rendered plaintiffs incapable of acting to protect their legal rights." Id. Nothing of the kind is present here. When the Aznarans decided to leave their staff positions but remain Scientologists in good standing, they did just that, without violating any legal or economic obligations. Wyatt, therefore, is wholly inapplicable.

IV. THE COURT SHOULD DISREGARD THE REMAINDER OF THE OPPOSITION

As detailed in the Preliminary Statement, supra, the real thrust of the Aznarans' Opposition is not the foregoing, ineffectual legal contentions, but rather the "just allege it" philosophy of Yanny's paralegal, Gerald Armstrong, Yanny's continuing involvement despite this Court's explicit order, and the willingness of the Aznarans and their counsel to say anything at any time to try to breathe life into their false and moribund claims. Armstrong's "helping out" while the Opposition was concocted not only reveals the continuing taint of Yanny's involvement with this case, it establishes the guiding principle that resulted in an Opposition that avoids cogent analysis of pertinent law and fact and instead seeks to prejudice the Court to the point of overlooking the motion, the relevant matters, and the fact that the Aznarans have all but expressly conceded that all their claims are time-barred.

Armstrong's philosophy of litigation is that facts and the truth are irrelevant and that all that is required to prevail is to allege whatever needs to be alleged is spelled out in a videotape of Armstrong made in 1984 as part of a police-authorized private investigation of individuals, including Armstrong, who attempted to seize control of the Church. [Cooley Dec., ¶ 4] In that tape, in the context of a discussion of attempting to prove facts in a civil proceeding where evidence was unavailable, Armstrong (under the mistaken belief that he was speaking with an ally) stated what a civil litigant should do when faced with a lack of evidence:

> They can allege it. They can allege it. They don't even have -- they can allege it.
>
> * * *
>
> Fucking say the organization destroys the documents.
>
> * * *
>
> Where are the -- We don't have to prove a goddamn thing. We don't have to prove shit; we just have to allege it. . .

[*Id*. at ¶ 4.]

The Aznarans literally trip over their own sworn statements in employing Armstrong's view of what courts will accept from civil litigants. They and their counsel are hopeful that smearing and falsely accusing defendants of all manner of things will suffice to prejudice the Court against the defendants to such an extent that truth, fact, law, and evidence are subordinated to a barrage of false and irrelevant accusations. Defendants submit the Rathbun, Bush, Prince, Heller, Bowles and Farny Declarations to set the record straight and debunk the lies that plaintiffs have elected to allege. They do not create any issue of material fact; this motion, based upon statutes of limitation and essentially undisputed facts, is meritorious on its own pertinent facts. Those declarations simply show that the Aznarans, Yanny, Greene and Armstrong will say absolutely anything, no matter how false or heinous, when they are concerned.

They are concerned here, trapped between facts that unassailably set their supposed claims in the legally distant past and statutes that bar their claims forever.

CONCLUSION

For the reasons set forth herein, and in defendants' previous memorandum and papers filed therewith, this Court should grant the defendants' motion for summary judgment dismissing plaintiffs' entire complaint as barred by the applicable statutes of limitations.

Dated: August 26, 1991

Respectfully submitted,

RABINOWITZ, BOUDIN,

STANDARD, KRINSKY &
LIEBERMAN, P.C.

By: Eric M Lieberman
Eric M. Lieberman

Attorneys for Defendants
CHURCH OF SCIENTOLOGY
INTERNATIONAL

WILLIAM T. DRESCHER
Attorney for Defendant
RELIGIOUS TECHNOLOGY
CENTER

EARLE C. COOLEY
COOLEY, MANION, MOORE &
JONES, P.C.
Attorneys for Defendants
CHURCH OF SPIRITUAL
TECHNOLOGY AND RELIGIOUS
TECHNOLOGY CENTER

MICHAEL LEE HERTZBERG
James H. Berry, Jr.
BERRY & CAHALAN
Attorneys for Defendant
AUTHOR SERVICES, INC.

LAURIE J. BARTILSON
KENDRICK L. MOXON
BOWLES & MOXON
Attorneys for Defendant
CHURCH OF SPIRITUAL
TECHNOLOGY, CHURCH OF
SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On August 26, 1991, I caused to be served the foregoing document described as REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BASED ON THE STATUTE OF LIMITATIONS on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Hollywood, California, addressed as follows:

Ford Greene
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

If hand service is indicated on the above list, I caused the above-referenced paper to be served by hand.

Executed on August 26, 1991 at Hollywood, California.